

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE (202) 663-7820
FACSIMILE (202) 663-7840

ENTERED
Office of Proceedings

APR 14 2008

Part of
Public Record

William A Mullins

Direct Dial (202) 663-7823

E-Mail wmullins@bakerandmiller.com

222079

April 14, 2008

BY HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001



RE: *The Kansas City Southern Railway Company – Abandonment Petition for Exemption – Line in Warren County, MS, Docket No. AB-103 (Sub-No. 21X)*

Dear Acting Secretary Quinlan:

Enclosed please find an original and eleven copies of the Reply To-Request For Compensation Due To Increased Costs Of Restoring Line To Service Caused By Partial Dismantling Of The Glass Road Bridge ("Reply") submitted on behalf of The Kansas City Southern Railway Company ("KCSR") in the above-captioned proceeding. Please note that Exhibit D is being submitted as a confidential document pursuant to the protective order issued in this proceeding and is therefore being submitted under seal in a separate envelope.

Please acknowledge the receipt and filing of the enclosed Reply by time stamping the eleventh copy and returning it to the courier for delivery to me. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by email: wmullins@bakerandmiller.com

Respectfully submitted,


William A. Mullins

Enclosures

CONTAINS COLOR COPIES

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**



**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

222079

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

**ENTERED
Office of Proceedings**

APR 14 2008

**Part of
Public Record**

**David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
427 West 12th Street
P.O. Box 219335
Kansas City, MO 64121-9335**

**William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Tel. (202) 663-7823
Fax (202) 663-7849**

**Attorneys for The Kansas City
Southern Railway Company**

April 14, 2008

CONTAINS COLOR COPIES

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
– ABANDONMENT PETITION FOR EXEMPTION –
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

The Kansas City Southern Railway Company (“KCSR”) hereby replies to the “Request for Compensation Due to Increased Costs of Restoring Line to Service Caused by Partial Dismantling of the Glass Road Bridge” (the “E&R Request”) filed by Mr Raymond B English (“Mr. English”) and Mr James Riffin (“Mr. Riffin”) on March 24, 2008.¹ E&R contend that Warren County’s unauthorized actions in partially dismantling a railroad bridge spanning Glass Road at milepost 229.8 (“Glass Road Bridge” or “Bridge”) located on the subject rail line require KCSR to pay Mr. Riffin \$237,610, which amount E&R claim represents the increased costs that Mr. Riffin will now incur returning a portion of the subject rail line to service

KCSR was not responsible for any alleged increased costs associated with the partial dismantling of the Glass Road Bridge. KCSR therefore objects to the proposition that Mr. Riffin is entitled to compensation from KCSR because KCSR neither dismantled nor caused the dismantling of the bridge nor did it benefit from any such unauthorized

¹ Collectively, Mr English and Mr. Riffin will be referred to as “E&R ”

activity by Warren County. In addition, requiring KCSR to compensate Mr. Riffin for damage to an asset that both parties have agreed (and the Board has accepted) has zero value would give KCSR less than the constitutional minimum value of its property and represent an unconstitutional taking in violation of the Fifth Amendment.

KCSR's constitutional concerns and objections notwithstanding, the Glass Road Bridge was not in operating condition before it was partially dismantled and would have needed to be completely replaced or substantially rebuilt before service could have been restored. As such, the actions by Warren County did not alter the operability of the Bridge or substantially increase the costs of restoring service. Thus Mr. Riffin is entitled to none of the "compensation" that he requests. In the alternative, KCSR's evidence will show that, if the Bridge in question could be returned to service without being fully rebuilt, E&R have grossly inflated their alleged increased costs to restore service over the subject rail line, which, in the view of KCSR and its expert witness, Mr. John E. Dunsworth, would be \$19,277.

BACKGROUND

The subject proceeding entails the abandonment of a stub-ended rail line owned by KCSR, located in Warren County, MS, extending from milepost 225.6 to milepost 229.85 (the "Line"). The Line is currently the subject of a joint offer of financial assistance ("OFA") under which E&R propose to acquire the Line. Specifically, E&R propose together to acquire the portion of the Line referred to as the "Segment" between milepost 225.6 and milepost 227.5, and Mr. Riffin proposes separately to acquire the

remaining portion of the Line between 227.5 and the end of the Line at milepost 229.85 (the "Remainder").²

In a decision served in this proceeding on February 22, 2008 ("February 22 Decision"), the Board established the purchase price for the Segment at \$376,320, and set the purchase price for the Remainder at \$128,295, a combined total of \$504,615 for the entire Line. The respective Board-prescribed values of the Segment and the Remainder represent the minimum constitutional value for each portion of the Line. E&R have indicated that they will accept the terms prescribed by the Board as clarified in a subsequent Board decision served on March 20, 2008 ("March 20 Decision").

During the pendency of this OFA proceeding, however, Warren County ("Warren County" or the "County") began to dismantle portions of the Glass Road Bridge, which is located near the tail end of the Remainder.³ The County undertook such actions without any advance notice to KCSR and without KCSR's consent.⁴ As soon as KCSR became aware of the County's actions, KCSR requested that the County to cease its efforts to remove the Bridge, and the County promptly complied. By that time, part of the Bridge had been dismantled and the County had disposed of certain Bridge components at a local landfill.

² Although E&R jointly request compensation, only Mr. Riffin would be entitled to any such compensation, because the bridge in question is located on the Remainder – a portion of the Line that Mr. Riffin proposes to acquire by himself. For this reason, KCSR will dispense with E&R's mistaken, but ultimately telling claim that E&R (rather than Mr. Riffin) are entitled to compensation, and KCSR will instead address the E&R Request in its proper context – a claim for damages allegedly due to Mr. Riffin.

³ As is relevant here, the Board accepted that the Bridge possessed no value, consistent with the parties' evidence and argument. February 22 Decision at 4.

⁴ KCSR understands that Mr. Carl Flanders, former Fourth District Supervisor for Warren County, has written to Mr. English to explain the circumstances relating to the County's partial dismantling of the Bridge.

Mr. Riffin requested the Board to order KCSR to restore the Bridge to the condition in which it existed prior to the actions of the County or to compensate him for the damage done to the Bridge. KCSR responded in opposition to those requests, noting that the parties had attributed zero value to that structure

In light of recent developments with respect to the Glass Road Bridge, the Board has decided to allow Mr Riffin to establish the extent, if any, to which the partial removal of the Bridge has increased the cost of returning the Remainder to active rail service, and it has given KCSR an opportunity to reply to Mr Riffin's evidence alleging any such increased costs. In connection with this issue, the Board directed KCSR to preserve all records, photographs, inspection reports, and any other information relevant to the condition of the Glass Road Bridge at the time of Mr. English's October 2, 2007 notice of intent to file an OFA.

On March 24, 2008, in keeping with the February 22 Decision, E&R filed a "Request for Compensation Due to Increased Costs of Restoring Line to Service Caused by Partial Dismantling of the Glass Road Bridge" (the "E&R Request")⁵. In that filing E&R claim that the Bridge was in operable condition prior to Warren County's actions and thereby go on to provide cost estimates associated with rebuilding the Bridge in accordance with its previously existing configuration. Based upon this approach, E&R state that the partial dismantling of the Glass Road Bridge will increase Mr Riffin's costs to restore rail service over the Remainder by \$237,610, which cost exceeds the total

⁵ On April 11, 2008, E&R offered an untimely "Supplement" to the E&R request wherein they demand an additional \$6,940 in compensation. If accepted, E&R's "supplemented" claim for compensation would be \$244,550. KCSR will address E&R's supplemental filing below.

prescribed value of the Remainder by \$109,315.⁶ Sec E&R Request at 6-7 In effect, E&R propose that the Board discount the Line's purchase price by \$237,610 so that they may acquire railroad property previously found to have a constitutional minimum value of \$504,615 for \$267,005⁷

ARGUMENT

KCSR raises two fundamental objections to the Board's February 22 Decision First, if the Board chooses to award any "compensation" to Mr Riffin as a result of Warren County's unauthorized actions (which KCSR did not direct, permit, or request), such compensation would deprive KCSR of the minimum constitutional value of its rail property and would thus entail a taking without compensation in derogation of the Fifth Amendment. Second, the Board has erred in placing the onus for Warren County's actions on KCSR As explained below, the facts here are quite distinguishable from those in Railroad Ventures, Inc – Aban Exem Youngstown, OH & Darlington, PA, 4 S T B. 583 (2000), ("Railroad Ventures"). If Mr. Riffin is due any compensation at all, which KCSR disputes, such compensation is due from Warren County The Board has no authority to require KCSR to pay for actions that it did not do or to compensate Riffin

⁶ E&R's claim that the Bridge was in "serviceable" condition before it was partially dismantled obviously assumes that none of the bridge components removed by the County had deteriorated to the point that they would have had to be replaced to restore the Bridge to service if the County had not partially dismantled it Given the age of the Bridge, its condition prior to Warren County's actions, and the fact that no maintenance had been done on the Bridge for at least 15 years, such an assumption is highly unlikely. This issue is further discussed in the attached verified statement of KCSR witness John E Dunsworth ("V.S Dunsworth") (attached as Exhibit A)

⁷ To put this in proper perspective, while E&R now propose to acquire the entire Line for the discounted price of \$267,005, the Board previously agreed that the track materials on the Segment alone possess a net salvage value of \$272,820

for damage to an asset that has been legally found to have a zero value and for which Riffin himself was not paying anything of value.

KCSR's objections both to the prospective taking of its property without just compensation and to the Board's decision to hold KCSR responsible for Warren County's actions would be moot if the Board finds, as it should, that Mr. Riffin will not encounter any increased costs in restoring the Remainder to service, and, accordingly, awards no prospective "compensation." But if the Board finds that Mr. Riffin will incur increased costs in restoring service to the Remainder, those increased costs should reflect only the costs stemming from Warren County's actions and should not be a remedy for pre-existing Bridge deterioration. Specifically, any genuine increased costs would reflect only such costs as are absolutely necessary to restore the Glass Road Bridge to its condition prior to the actions of the County. If such an analysis is applied here, KCSR submits that, at most, Mr. Riffin would be entitled to \$19,277 as increased costs resulting from the County's actions.

I. DIRECTING KCSR TO PAY "COMPENSATION" TO MR. RIFFIN WOULD AMOUNT TO AN UNCOMPENSATED TAKING OF KCSR'S PROPERTY IN VIOLATION OF THE FIFTH AMENDMENT

The Board has determined that the minimum constitutional value of the Remainder, upon which the Glass Road Bridge is located, is \$128,295. In arriving at that figure, the Board determined that the only asset on the Remainder possessing value was the land comprising the Remainder's right-of-way. In so prescribing the price for the Remainder, the Board specifically rejected Mr. Riffin's argument that the bridges on the Line possess a negative salvage value, and, consistent with precedent, the Board instead prescribed a zero value for all of the bridges on the Line, including the Glass Road

Bridge, because none of them would have had to be salvaged in connection with abandonment. In prescribing the Remainder's sale price, the Board adhered to the general principle that, "[t]hrough the OFA process, [the Board is] required to give the carrier the constitutional minimum value for the [property]." See, e.g., Union Pacific Railroad Company – Abandonment Exemption – In Lancaster County, NE, STB Docket No AB-33 (Sub-No. 112X) (STB served Mar 12, 1998), 1998 STB LEXIS 66, *16.

Awarding damages to Mr Riffin in accordance with E&R's claim would result in a negative value for the Remainder.⁸ And, in directing KCSR to compensate Mr. Riffin for any amount, the Board would be effecting a taking of KCSR's property without just compensation. Such a result simply does not comport with the Board's constitutional obligation. Agency precedent provides that the OFA statute "is a condemnation provision, and must be administered to avoid any violation of the constitutional prohibitions on taking without just compensation." Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Jackson County, CO, Docket No. AB-307 (Sub-No. 2X) (ICC served Sept. 15, 1995), 1995 ICC LEXIS 238, *2.⁹

The Board's February 22 Decision setting zero value of the Glass Road Bridge (and all other bridges on the Line for that matter), subsequently reaffirmed in the March

⁸ In fact, if the Board accepted E&R's costs and request for "compensation," then KCSR would be required to pay Mr. Riffin \$109,315 for taking possession of the Remainder.

⁹ Elsewhere, the agency has commented upon the OFA provision as follows

Our OFA procedures were affirmed in Chicago & North Western Transp Co v. ICC, 678 F.2d 665 (7th Cir 1982). The court equated them with a Fifth Amendment taking and ruled that carriers are constitutionally entitled to just compensation. The court defined compensation as just "when it gives the property owner what he would have but for the taking." Id. at 668

Increasing the Offer of Financial Assistance Purchase Price to Compensate for the Tax Liability Incurred on the Sale of Personal Property, Ex Parte No. 274 (Sub-No 19) (ICC decided Feb 16, 1990), 1990 ICC LEXIS 55, *2-*3.

20 Decision does not comport with the Board's willingness to reduce the value of that asset to a negative number based on the unauthorized actions of a third party. Throughout this proceeding, E&R have insisted that all of the bridges on the Remainder will require rehabilitation due to the extended time that they have been inactive and unmaintained (a point that KCSR does not dispute), but the Board quite correctly declined to accord these bridges a negative value for that or for any other reason. Rather, the Board properly assessed the evidence of the bridges' net salvage value and accorded each and every one of them a value of zero.

The County's actions have not changed the value of the Glass Road Bridge as a "liquidatable" asset. Both before and after the County's unauthorized dismantling of the Bridge, its value was zero, and so it remains. Citing to Railroad Ventures (discussed below), the Board states that removal of rail assets after the invocation of the OFA provisions is generally not condoned because it "reduces the assets in place .. and thus can obstruct or impede the efforts of the offeror to provide rail service." February 22 Decision at 4. The Board's statement, while referring to the "assets in place" omits reference to the value of those assets, which, in this case, have not changed. It is abundantly clear that, but for the proposed taking under 49 U.S.C. 10904, the Board would not have initiated any compensation proceeding.¹⁰ And because the OFA taking and compensation elements of this proceeding are so interconnected, any award of compensation for alleged damage to an asset that has zero value, and for which neither

¹⁰ Were E&R's Bridge-related claims related to an unforced sale of the property pursuant to the provisions of either 49 U.S.C. section 10901 or section 10902, then it is highly unlikely that the Board would have intervened as it has done here. Logically, therefore, the Board's willingness to consider compensation to Mr. Riffin is a construct of the Board's authority under the OFA statute.

Riffin nor E&R were paying as part of the OFA, will have a collateral negative impact on the overall compensation that KCSR will receive for the Remainder; resulting in KCSR receiving less than constitutional minimum value of the Remainder. Such a result is an uncompensated taking of KCSR's property ¹¹

As the record in this proceeding reflects, and as the Board has effectively acknowledged, were it not for the OFA proceeding, KCSR would convey the Remainder to The City of Vicksburg for \$128,295, regardless of the condition of the Bridge. If, however, the Board opts to award "compensation" of any kind to Mr. Riffin in connection with the County's partial dismantling of the Bridge, then the Board will have reduced the net liquidation value of the Remainder without any showing that the value of the assets that comprise the Remainder have declined proportionately. For these reasons, KCSR objects to the proposition that the Board may direct KCSR to compensate Mr. Riffin due to the current status of the Glass Road Bridge. Any such award of compensation would deprive KCSR of the full value of its property without compensation in violation of the Fifth Amendment.

II. KCSR SHOULD NOT BE HELD ACCOUNTABLE FOR WARREN COUNTY'S UNAUTHORIZED ACTIONS

The Board has maintained that its reaction to the changed status of the Glass Road Bridge "does not bear" on the valuation of the Remainder. February Decision at 4. But

¹¹ See, e.g., Kirby Forest Indus. v. United States, 467 U.S. 1, 10 (U.S. 1984) (Just compensation means that the entity whose property is taken is due the fair market value of that property on the date it is appropriated; the owner is entitled to what a willing buyer would pay to a willing seller at the time of the taking); Seaboard A. L. R. Co. v. United States, 261 U.S. 299 (U.S. 1923) ("[t]he compensation to which the owner is entitled is the full and perfect equivalent of the property taken. It rests on equitable principles and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken") (citations omitted).

as KCSR has explained in the preceding section, the value of the Remainder, and the Board's willingness upon proper showing to award compensation to Mr. Riffin, are inextricably linked. Even if compensation to Mr. Riffin could be viewed as separate and apart from the agency's valuation of the Remainder, then the Board has, in effect, enunciated a standard of strict liability for railroads involved in OFA proceedings that extends well beyond the Railroad Ventures precedent upon which the Board relies. Such an expansive reading of Railroad Ventures is neither an equitable nor an efficient response to circumstances under which railroad assets are damaged or lost as a result of the independent, unauthorized actions of third parties or as a result of other circumstances beyond the control of the railroad.

As the Board is well aware, the saga of the Railroad Ventures proceeding flows from the actions of Railroad Ventures, Inc. ("RVI"), which, as the owner of a rail line subject to an OFA proceeding instituted by Columbiana County Port Authority ("CCPA"), surreptitiously conveyed to an RVI affiliate certain subsurface and air rights in the rail property. The Board explained that the conveyance of such property rights (which occurred after RVI had supplied CCPA with information necessary for CCPA to conduct an appraisal of the property) could affect the overall value of the rail line that CCPA intended to acquire. In light of this development, the Board concluded that the surreptitious conveyance undermined the OFA process, and the Board ordered RVI to show cause why those conveyances should not be voided.

The facts in Railroad Ventures are quite distinguishable from those here, because, unlike KCSR, RVI knowingly took actions that eroded rail assets that had a recognized value, and concealed such developments at a time when CCPA was formulating its own

valuation of the line in question. The Railroad Ventures decision that the Board cites and appears to rely upon, responds to and remedies the willful acts of RVI which may have been designed to undermine the OFA process. Railroad Ventures, 4 S T B at 584 ¹². The essence of the Railroad Ventures and Railroad Ventures-II decisions is that the Board stands ready to hold those accountable that willingly reduce the value of an asset. But the circumstances in this proceeding are quite different, because KCSR has done nothing to thwart the OFA process. In short, neither Railroad Ventures nor Railroad Ventures-II supports the Board's actions here.

Unlike RVI, KCSR is neither the perpetrator of any actions to "obstruct or impede the efforts of the offeror to provide rail service," (February Decision at 4) nor has it encouraged such action. KCSR has had no hand in partially dismantling the Bridge, has engaged in no misconduct, and the County, not KCSR, should be held accountable for its independent actions. The County has partially dismantled the Bridge, and has done so without KCSR's permission, complicity, or knowledge. In fact, upon learning of the

¹² Although not so stated, it appears from the discussion in the February 22 Decision preceding the Railroad Ventures citation that the Board may have meant to refer also to Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA, STB Docket No. AB-556 (Sub-No. 2X) (STB served Oct. 4, 2000) ("Railroad Ventures-II"), aff'd, Railroad Ventures, 299 F.3d 523. In that decision, the Board ordered RVI to establish an escrow account from which CCPA was to be compensated for repairs to track damage (which included paving over track and disconnecting crossing signal systems) that RVI or its contractor had caused. In ordering RVI to arrange to compensate CCPA, the Board criticized RVI for its "blatant disregard of its common carrier obligation," and found that its actions constituted misconduct. See Railroad Ventures-II at 19. Again, unlike here, RVI had taken actions (or voluntarily acquiesced in actions) that reduced the value of the rail property that CCPA was paying for in the context of the OFA. Here, KCSR did not acquiesce in the action, the "asset" that was "damaged" had zero value, and neither Riffin's nor E&R's OFA included any value for the asset in their OFA offer so that the "damage" would reduce the value of that which Riffin or E&R were paying.

County's activities, KCSR directed the County immediately to cease any further dismantling of the Bridge. Because KCSR neither removed nor permitted any "assets" to be removed¹³ from the Remainder, it is impossible to understand why KCSR is nevertheless being held accountable for the County's actions, unless the Board intends in this proceeding to enunciate a strict liability policy not contained in Railroad Ventures or in Railroad Ventures-II, whereby any loss of, or damage to, rail line assets (particularly valueless assets) during the pendency of an OFA proceeding becomes the liability of the selling railroad.

Under the Board's apparent logic, KCSR would be liable to Mr. Riffin regardless of how the Glass Road Bridge came to be in the condition in which it now exists, whether by act of God, arson, vandalism, flooding, earthquake, theft, or vehicular collision.¹⁴ To the extent that Mr. Riffin faces any increased costs in restoring rail service over the Remainder, Mr. Riffin, as the owner of property that may have been damaged by the action the County (assuming he buys the Remainder), would have a claim against the County for alleged damage to the Bridge. KCSR, however, cannot be deemed a proxy for the County and ordered to compensate Mr. Riffin (assuming such compensation is valid) when KCSR in no way caused the County to dismantle the Bridge. The County can and should be held accountable for its independent actions here (a point that the Board arbitrarily and capriciously evades in its decisions),¹⁵ and, if he chooses to acquire

¹³ See id. ("Removing or permitting the removal of track or other assets, including bridges.. tends to undermine [the OFA] process").

¹⁴ The Board's decisions seem to imply that KCSR breached an unstated duty to preserve the Line's assets when, unbeknownst to KCSR, the County began salvaging the Bridge.

¹⁵ Despite the Board's apparent insistence that its valuation of the Remainder is a matter separate and apart from the compensation potentially due Riffin, the February 22 Decision sidesteps the Board's legal authority to require KCSR to compensate for the

the Remainder, Mr Riffin should be allowed to pursue his rights against the County alone in an appropriate forum. Such a process far more efficiently serves the interests of all concerned, and would avoid potentially penalizing KCSR for actions that it did not commit and does not condone.

III. THE GLASS ROAD BRIDGE WAS UNUSABLE PRIOR TO WARREN COUNTY'S ACTIONS

Pursuant to the February 22 Decision, KCSR has been permitted to provide "evidence that the [Glass Road Bridge] was unusable prior to the actions of the County and would have had to have been replaced before service could have been resumed." Id. As would likely be the case for any bridge on an out-of-service section of a branch line that had been acquired as part of a larger transaction (in this case, KCSR's purchase of the MidSouth system in 1993),¹⁶ KCSR does not have many records concerning the Bridge. But those that KCSR does have show that individuals in KCSR's Engineering Department who have known of the Bridge have considered it unusable. Consistent with those records, the Board should find that the Glass Road Bridge was not usable prior to the County's actions, and, on this basis alone, should deny E&R's request for compensation.

"damage" done by the County to an asset that has zero value. Here, the Board has set the purchase price for the Remainder, has indicated that KCSR may be required to compensate Mr. Riffin for the County's actions, but then offers "no comment" about whether KCSR can or would be made whole in any separate proceeding in the "appropriate forum." Id. at 5. As the buyer, it is Riffin who should be required to seek compensation in the "appropriate forum" not KCSR. Indeed, the Board's decision, while assuring Mr. Riffin with an opportunity to be compensated for any increased costs he proves he will incur to restore service over the Remainder, offers no similar assurance to KCSR.

¹⁶ Kansas City Southern Industries, Inc., The Kansas City Southern Railway Company and K&M Newco, Inc. --Control--MidSouth Corporation, MidSouth Rail Corporation, Midlouisiana Rail Corporation, Southrail Corporation and Tennrail Corporation, Finance Docket No. 32167 (ICC served June 4, 1993)

KCSR's records indicate that KCSR never maintained the Bridge or ever formally inspected it. Although KCSR is certain that the Remainder and the Bridge have been out of service during the entire 15 years that KCSR has owned this property, KCSR has no records from MidSouth to establish definitively when, prior to KCSR's acquisition of the property, the Remainder and the Glass Road Bridge were taken out of service, but it is quite possible, based on the records available to KCSR, that the Glass Road Bridge has seen no maintenance for well more than 20 years.¹⁷ KCSR has not prepared any inspection reports of its own on the Bridge, although it does have one pre-MidSouth inspection report for the Bridge, dated June 24, 1986 (which may be the last inspection report prepared on this Bridge)(such inspection report is attached hereto as Exhibit B). This report does not indicate that the Bridge was in operating condition and implies the Bridge was in need of maintenance

Although KCSR undertook no formal bridge inspections and prepared no inspection reports for this Bridge (because it has been out of service the entire time KCSR has owned it), KCSR's Pete Goodman, Director of Bridge Maintenance, had occasion in 2005, well before this proceeding even began, to observe the condition of the Bridge, and he reported to others concerning its status at that time. Specifically, KCSR's records indicate that Warren County officials had contacted KCSR in 2005, inquiring about whether the Glass Road Bridge could be removed. In connection with that inquiry, Mr Goodman, who was familiar with the Bridge, advised others at KCSR as follows

"[K]udzu has taken the bridge over and the rail is taken up [s]outh of this location. The

¹⁷ To the best of KCSR's knowledge, the Remainder and the Glass Road Bridge were taken out of service in 1986 or very shortly thereafter. If so, this would mean that the Remainder and Bridge were already inactive and had not been maintained even before MidSouth acquired the property from the Illinois Central Railroad

beam span is too light for [us] to use anywhere in the track " Exhibit C (email from Pete Goodman dated September 20, 2005) After the subject proceeding had been initiated, Mr. Goodman essentially reiterated his 2005 assessment of the Bridge, noting, in part, that:

I know the bridge in question[,] and the beam span over the roadway is too light for what we would want if we were to rebuild the track The only thing worth anything with the bridge is the scrap cost of the beams The substructure was timber and not in very good shape ¹⁸

In another e-mail sent on the night of February 25, 2008, Mr Goodman states his recollection of a 2005 meeting with Warren County representatives and his opinion at that time regarding the condition of the Bridge He notes that.

The bridge was in very bad shape structurally and the rail was taken up on both sides of the bridge. My thought at the time was to get it removed and remove KCS's liability if part of the bridge were to collapse or if a vehicle hit the bridge. ¹⁹

E&R's filings reflect ambivalence about the condition of the bridges on the Remainder In their Request to Set Terms and Conditions filed on January 25, 2008, E&R remark that the bridges on the Remainder have not been maintained for at least the past 15 years, and suggest that the (unquantified) cost to rehabilitate the bridges be factored into the purchase price for the Remainder. E&R Request to Establish Conditions and Compensation for Financial Assistance (January 25, 2008) at 4, 19-20 In the E&R Request, however, E&R now maintain that, with the exception of some vegetation

¹⁸ E-mail from Pete Goodman, dated February 25, 2008, included with Exhibit C).

¹⁹ E-mail from Pete Goodman, dated February 25, 2008, attached hereto as Exhibit D. Because it is a confidential document, the relevant content of that e-mail has been redacted above The entire e-mail has been submitted under seal in a separate envelope pursuant to the protective order issued in this proceeding

control, the Glass Road Bridge was effectively in “serviceable condition,”²⁰ and needed little, if any rehabilitation.

Rather than address the materials that KCSR has supplied to Mr. Riffin in discovery or confer with the County’s road crew supervisor who removed portions of the Bridge, as Mr. Dunsworth did, E&R and their witnesses offer brief, superficial statements regarding the condition of other bridges on the Remainder, and then infer from those observations what they believe the prior condition of the Glass Road Bridge would have been prior to Warren County’s actions. These opinions seem obviously manufactured for the purpose of this proceeding and stand in stark contrast to contemporaneous notes and opinions developed in prior this proceeding even beginning

Not only does E&R’s generalized evidence as to the condition of other bridges on the Remainder have limited, if any, application to the prior condition of the Glass Road Bridge, but it reflects that E&R avoided information supplied to Mr. Riffin in discovery that the Bridge was unusable before the County partially dismantled it. E&R state that, “No evidence could be found which would even remotely suggest the Glass Road Bridge was not in serviceable condition prior to its partial demolition.” But, such evidence could be found and was given to Mr. Riffin in discovery. It is unclear whether any of E&R’s witnesses were provided with copies of any of this material. On the basis of the KCSR-produced information (including, in particular, Mr. Goodman’s emails), it is evident that KCSR’s engineers did not believe KCSR would use the Bridge, and felt that it should be removed and/or replaced. Mr. Goodman’s assessment of the Bridge, as contained in the

²⁰ Neither E&R nor their witnesses articulate a standard under which a bridge would be deemed usable or unusable, much less apply such a standard to the Glass Road Bridge

emails provided to Mr. Riffin, go unacknowledged by E&R, have not been refuted in the E&R Request, and belie E&R's claim that evidence on this matter could not be found

The evidence shows that the Glass Road Bridge was not structurally safe before the County partially dismantled it. This was KCSR's view well before the Line became the subject of an abandonment and related OFA proceeding, and the attached verified statement of Mr. Goodman, attached as Exhibit E, further reinforces the points made in his prior e-mails. See also Verified Statement of Srikanth Honnur, attached hereto as Exhibit F.

While the verified statement of E&R's witness Mr. Joe Buckley may have been intended to support the proposition that the Bridge was usable prior to the County's actions, it proves no such thing. Mr. Buckley merely states that certain inspected components of the Bridge were in "good condition," and then, based in part on passing reference to his assessment of other bridges on the Remainder, posits that the Bridge "most likely would have been in serviceable condition with no deficiencies" without applying any sort of a standard for what factors should be considered in assessing a Bridge's ability to handle rail traffic.²¹ This does not prove that the Bridge was usable prior to the County's actions, and the Board should find that the Bridge was unusable and would have needed to be replaced, and, accordingly, it should deny the E&R Request.

²¹ Mr. Buckley's verified statement does little more than assess the materials remaining after the Bridge had been partially dismantled. He does not mention whether he conferred with Warren County road crew personnel who oversaw the dismantling (and who could have offered information regarding the condition of the materials removed and disposed of), attempted to inspect any of the removed and disposed of bridge components, or considered the documents supplied to Mr. Riffin in response to discovery requests seeking information about the Bridge.

IV. ASSUMING THAT THE BRIDGE WERE USABLE PRIOR TO WARREN COUNTY'S ACTIONS, MR. RIFFIN'S INCREASED COSTS TO RESTORE SERVICE WOULD BE \$19,277

As KCSR has shown in the preceding section, the Glass Road Bridge would not have been used by KCSR before Warren County partially dismantled it and KCSR would have replaced it. But, in the alternative, even if one were to accept E&R's vague assertions that the Bridge was in "serviceable condition" prior to the County's actions, E&R have grossly overstated their increased costs to restore service over the Remainder as a result of the County's actions.²² E&R claim that the County's unauthorized partial dismantling of the Bridge results in increased restoration costs of \$237,610 (ostensibly, the net of the total costs that Mr Riffin would have to incur to restore the Bridge to its prior "serviceable condition," less the costs Mr Riffin would have had to incur regardless of the County's actions). Assuming, arguendo, that the Bridge did not need to be replaced, KCSR's expert witness, Mr. John E. Dunsworth, shows that the increased costs would be \$19,277

A. Mr. Dunsworth Has Demonstrated that Mr. Riffin's Net Increased Costs to Restore the Bridge to Service Would Be \$19,277

In his verified statement, Mr Dunsworth provides a thorough explanation of the assumptions framing his understanding of the "increased costs" (as that term is used in the February 22 Decision), if any, that Mr. Riffin might incur due to the County's partial

²² Again, KCSR takes issue with the Board's view that the proper analysis is to focus on the increased costs associated with returning the Bridge to operable condition. The proper legal analysis in the context of an OFA proceeding, as consistent with Railroad Ventures and Railroad Ventures – II and constitutional jurisprudence under the Fifth Amendment, is to focus on the extent to which Warren County's actions have reduced the value of the asset that is the subject of the taking and thus whether the taking price should be reduced to reflect a reduction in that value due to actions by a third party not associated with the owning railroad. As noted, the value of the Bridge was set at zero. Thus, E&R and Riffin have lost nothing of value as a result of Warren County's actions.

dismantling of the Bridge. He also offers a detailed explanation of the costs that, in his expert opinion, do and do not qualify as “increased costs.” Finally he shows that Mr. Riffin’s estimates are inflated by cost inputs that are wasteful, unrealistic, and calculated by an individual that, unlike Mr. Dunsworth, did not undertake an at-site inspection of the Bridge.

The main differences between E&R’s increased cost estimate (which costs derive primarily from E&R’s witness, Donald L. Steele) and Mr. Dunsworth’s relate to the type of repair work recommended and to a difference of opinion about the condition of certain Bridge components removed by the County. E&R and Mr. Steele presume that the Bridge would be repaired with new pilings installed to replace the ones that had been broken off, an undertaking that is far more expensive than Mr. Dunsworth’s proposal wherein the broken pilings would be addressed with frame bents and sills attached at the base of the pilings where the pilings remain in the ground. See V.S. Dunsworth at 9-10.

Mr. Dunsworth and Mr. Steele also disagree about the condition of the ballast boards, ballast guards, and ballast on the Bridge at the time that it was partially dismantled. Mr. Dunsworth concludes after investigation that these items were rotten or spent and would have had to be replaced even if the Bridge had remained intact, while Mr. Steele presumes otherwise. Mr. Dunsworth explains that, given the likely age of the ballast, ballast boards and ballast guards on the Bridge, and in light of the vegetation that pre-dismantling photos depict as growing on the Bridge, it is very likely that these Bridge components were spent and would have needed to be replaced regardless of Warren County’s actions. Mr. Wymans, who oversaw the County’s partial dismantling of the Bridge, has confirmed to Mr. Dunsworth that these Bridge items were rotten (in the case

of the boards and guards) and fouled (in the case of the ballast) V S Dunsworth at 13²³
Thus, had Warren County done nothing to the Bridge, Mr. Riffin still would have had to replace these items at his own cost to return the Bridge to operating condition.

Finally, Mr Dunsworth notes that much of the removed bridge material that may still have been usable could be replaced at no charge to Mr. Riffin with surplus used (and reusable) material from an ongoing KCSR rail line restoration project in Texas. Specifically, the timber structures removed during the course of KCSR's Texas project have not had rail traffic for several years, are reusable, and would be in equal or better condition than the still-usable timber components of the Bridge that the County had removed See Dunsworth V S at 19-20.

Dismissing as unnecessary and wasteful much of the cost inputs in Mr. Steele's estimates (particularly the costs associated with installing new pilings), and rejecting as an increased cost the replacement of the ballast boards, ballast guards, and ballast on the Bridge (as well as the related cost of waterproofing new boards and guards), Mr. Dunsworth explains that the only costs that could be regarded as "increased costs" associated with Warren County's actions would be related to the following remedial actions.

- (a) Excavate at the ground line of bents seven and eight and install frame bents on timber sills on the piling
- (b) Install frame bents, including piling, caps, bracing, timber sills and all associated hardware.
- (c) Replace the timber caps on timber bents 2 and 3, including all associated hardware

²³ The attached letter dated February 22, 2008, from Richard George, President of the Warren County, MS, Board of Supervisors (Exhibit G), refers to "falling debris from the trestle, which further substantiates the poor condition of these bridge components

(d) Replace 4 of the 35"x8" x16" timber stringer chords in a ten ply configuration, including all associated hardware.

(e) Cut stringers with the correct panel points and the joints placed as to have 100% of the joints extend across each interior timber cap.²⁴

Mr. Dunsworth then itemizes his labor and equipment cost components for such remedial action as follows:

- Supervisor (Bridge Qualified) \$45.00 per hour (\$450.00/day)
- Operator (Machine Operator Qualified) \$35.00 per hour (\$350.00/day)
- Bridgemen (2): 2@ \$25.00 per hour (\$500.00/day)
- Trackhoe (fully fueled and maintained) \$65.00 per hour (\$650.00/day)
- Pick-up truck (fully fueled and maintained). \$15.00 per hour (\$150.00/day)

Sub-total. \$2,100.00/day

Expenses – food & lodging 4 workers at \$100.00 per worker (\$400.00/day)

Total Daily Labor and Equipment Cost: \$2,500/10-hour day²⁵

Mr. Dunsworth then applies his labor and equipment costs to the scope of the work that would remedy the damage done by the County as follows:

- Unload timber/materials from Vicksburg Yard, transport to work site (two crew days) \$5,000
- Trucking service to transport timbers/materials (at \$95/hour for one 10-hour day): \$950
- Set four timber caps and install hardware for same (one crew day).
\$2,500
- Cut stringer timbers to length; set stringers, secure/install hardware (two crew days). \$5,000

²⁴ V.S. Dunsworth at 10.

²⁵ Id at 15.

- Set stingers in place (one crew day)
\$2,500
- Excavate around bents 7 and 8, cut piling to correct elevations (one crew day).
\$2,500
- Set sills and set frame bents and complete bolting in place (one crew day)
\$2,500
- Install sway bracing and clean-up @ work site (one crew day)
\$2,500

Total of nine crew days (including equipment costs and trucking): \$23,450²⁶

Mr. Dunsworth also explains that Mr. Steele's materials cost estimate of \$67,340 is too high, and that the correct figure would be \$1,653. As indicated above, the sizeable difference between the two materials cost estimates is that Mr. Steele presumes the procurement of all new materials (including materials that are unnecessary under Mr. Dunsworth's approach), while Mr. Dunsworth has found that much of the necessary timber materials are available from the KCSR Texas line project mentioned above at no cost to Mr. Riffin.²⁷ Beside the timber materials to be provided by KCSR, the other materials that will have to be purchased for this project are itemized as follows (again, for a total of \$1,653):

14"x14"x18' timber sill	2	\$200.00 each	\$400.00
¾"x18" bolts	24	\$5.00 each	\$120.00
evertight springs	84	\$2.00 each	\$168.00
malleable washers	84	\$2.00 each	\$168.00
¾" net nuts	84	\$1.50 each	\$126.00
clip angles	24	\$12.00 each	\$288.00
¾"x24" drift pins	96	\$3.00 each	\$288.00
brace board 4"x10"x18'	1	\$53.00 each	\$53.00

²⁶ Id at 15-16. The differences between Mr. Dunsworth's and Mr. Steele's respective cost inputs are also set forth in the table at pages 16-17 of Mr. Dunsworth's statement.

²⁷ KCSR will move all reusable materials from its Texas worksite to the Vicksburg Yard.

¾"x22" bolts	7	\$6 00 each	\$42 00²⁸
---------------------	----------	--------------------	-----------------------------

Together, the labor and equipment costs and materials costs that Mr Riffin would not have incurred in restoring the Bridge to service but for the actions of the County total \$25,103 (\$23,450 labor/equipment + \$1,653 material).

Mr. Dunsworth observes, however, that Mr. Riffin actually has benefited from some of the actions taken by the County. Specifically, Mr. Riffin would have had to remove the rotten ballast boards and ballast guards and the fouled ballast at his own cost to restore the Bridge to service if not for the work of the County. By removing and disposing of this material, however, the County has actually reduced Mr. Riffin's restoration costs by an amount of \$6,500. See *id.* at 13-14. Once this adjustment is accounted for, Mr. Riffin's potential increased labor, equipment and materials costs resulting from the County's actions are reduced from \$25,103 to \$18,603. Factoring in the Mississippi contractor tax of 3.6269% to both the increased and decreased contractor costs at issue here, Mr. Dunsworth summarizes Mr. Riffin's net "increased costs" to restore the Bridge to service like this

Labor and Contract Costs: ²⁹	\$23,450
Material Costs.	\$1,653
Sub-total (all increased costs – pre tax)	\$25,103
Contractor tax (3.6269% of \$25,103)	\$910
Sub-total (all increased costs – with tax):	26,013
Decreased costs (ballast decking/ballast – pre tax).	(\$6,500)

²⁸ *Id.* at 20-21

²⁹ Including trackhoe and pickup truck rental costs (which represent all of the equipment costs associated with this project)

Contractor tax savings (3 6269% of \$6,500)	(\$236)
Sub-total (all decreased costs – after tax)	(\$6,736)
Total (all increased costs less decreased costs)	\$19,277³⁰

B. The Verified Statements Supporting the E&R Request Lack Substance

The verified statements accompanying the E&R Request do not offer reliable support for E&R's claims regarding the previous status of the Bridge and contribute little of substance to Mr Riffin's claim that his increased costs to restore the Remainder (due to the County's actions) would be \$237,610. The flaws in Mr. Steele's verified statement have been discussed above, and Mr Steele's cost estimates (and assumptions) contained therein are thoroughly and soundly discredited by Mr. Dunsworth. The other verified statements included with the E&R Request add little, and the purposes and intent of those statements are somewhat suspect.

Likewise, the Verified Statement of Theodore M Niemeyer, P.E ("V S Niemeyer") proffered by E&R, for example, little more than makeweight testimony offered to give the E&R Request the false appearance of substance. Once it is read in the context of all of the other verified statements that E&R have included with their filing, it becomes clear that Mr Niemeyer does nothing more than re-hash the statements of E&R's other witnesses and endorse, without further elaboration, their findings and claims. The V.S. Niemeyer is wholly unnecessary and amounts to nothing but cumulative evidence.

In its two pages, the Verified Statement of Joe Buckley ("V S Buckley"), another E&R witness, attempts to establish the pre-dismantled condition of the Bridge by offering

³⁰ Id. at 21-22

a superficial account of the various bridges on the Remainder and then extrapolating from the condition of those bridges in order to guess what the condition of the Glass Road Bridge was before Warren County did what it did. Mr. Buckley then ends his statement with a conclusory remark that the Bridge “most likely” would have been in “serviceable condition” (an undefined term in Mr. Buckley’s statement) had the County not partially dismantled it. Such a statement ignores the evidence provided during discovery and offers no standard by which one should objectively judge his conclusions. As such, it can be accorded little, if any, weight.

It would appear that the real purpose behind the Buckley V.S. is for E&R to offer a witness with some prior connection to the Line and the Bridge. Given his asserted familiarity with the Line (spanning multiple owners), Mr. Buckley might have been in a position to address the last time the Bridge may have been maintained by any railroad that he worked for, but he did not do so. Such information could have been highly relevant, because, owing to the relatively advanced age of the Bridge components and at least 15 years of deferred maintenance, one would reasonably expect that certain bridge components have exceeded their useful life and would need to be replaced, consistent with the findings and conclusions in Mr. Dunsworth’s attached verified statement. Mr. Buckley also does not address the discrepancy between his opinion of the Bridge (before it was partially dismantled) and that of KCSR’s Mr. Goodman, possibly because Mr. Riffin never supplied to Mr. Buckley the documents containing Mr. Goodman’s views.

Finally, the Verified Statement of Bobby Carpenter (“V.S. Carpenter”) is surplusage, and merely confirms that he was the on-site “eyes” for Mr. Steele, as already adequately recounted in the V.S. Steele. Mr. Carpenter’s inspection notes, conversations

with Mr. Steele (in which Mr. Carpenter may have offered preliminary conclusions about the condition of the Bridge), and photographs formed the basis for Mr. Steele's cost estimates. Although an engineer, Mr. Carpenter professes no prior railroad experience in his verified statement (unlike other witnesses), and his past involvement in this proceeding casts doubt upon his reliability as a witness on railroad bridge matters. Specifically, while now supporting the \$237,610 increased cost estimate, he has previously supplied a "preliminary estimate" that it would cost \$1.5 million to rehabilitate the Bridge, a figure upon which E&R had previously relied. See "Update – Unauthorized Removal of Bridge and Track Material" (filed February 11, 2008) at 2, Exhibit N. Such a large "preliminary estimate" is astounding, even in comparison to E&R's inflated \$237,610 claim.

C. Any "Compensation" To Mr. Riffin Should Be Ordered To Be Paid Only After He Has Completed Restoration Of The Bridge

In an effort to use Mr. Riffin's alleged "increased costs" as a purchase discount, E&R suggest that the damages that they claim would be owed to Mr. Riffin should be counted as an offset against the purchase price for the entire Line, thereby allowing Mr. Riffin to collect his compensation up front. KCSR objects to E&R's proposal, as it does to the proposition that it should be made to compensate E&R or Mr. Riffin for a zero value asset that has been damaged by the unauthorized actions of a third party. Such objections notwithstanding, Mr. Riffin is entitled to no award of any Board-prescribed "increased costs" – if the Board finds that any exist – until such time as he completes his restoration of the Bridge and the Remainder.³¹

³¹ Assuming that Mr. Riffin agrees to purchase the Remainder, KCSR will agree to supply reused bridge materials from its Texas line project, but Mr. Riffin will have to

As the record clearly reflects, Mr. Riffin proposes to acquire the Remainder which has been out of service and contains no rail assets of value. There is no persuasive evidence that any potential shipper or shippers exist at or beyond the very end of the Remainder that could justify the considerable expense that Mr. Riffin would have to incur to bring the entire Remainder back to service. KCSR seriously doubts that Mr. Riffin will ever actually restore service to and over the Glass Road Bridge, despite his high aspirations, or that there would be economic justification for him to do so.

If the Board were to direct the payment of compensation to Mr. Riffin up front, this would place money in his pocket without any assurance that any Bridge restoration would ever take place or that any such restoration would be warranted.³² Mr. Riffin may not rebuild the Bridge. He is entitled to no compensation until his Board-prescribed "increased costs," if any, are actually incurred.

CONCLUSION

Whenever in this proceeding the Board has permitted them an opportunity to do so, E&R have determined to try to force the sale of the Line for as close to \$0 as possible. Under their latest strategy, E&R contend that the unauthorized actions of a third party, Warren County, in removing portions of the Glass Road Bridge entitle Mr. Riffin to

make arrangements to transport these materials from KCSR's Vicksburg Yard to the Bridge work site. If Mr. Riffin chooses to forego KCSR's offer of bridge materials, he may do so on the understanding that his decision will not entitle him to any further compensation from KCSR in connection with Mr. Riffin's acquisition of alternative materials.

³² At best, KCSR should be directed to place the money in escrow not to be released until such time as Riffin actually does restore the Remainder and Bridge to a point where service could actually be resumed over the Line.

\$237,610 (or \$244,550, if the E&R Supplement is accepted for consideration) ³³ But, as KCSR has shown above and in the verified statements attached to this reply, Mr. Riffin is entitled to no compensation, and, in the alternative, if there is any arguable “increased costs,” such costs amount to \$19,277

If KCSR is forced to compensate Mr. Riffin for damage to the Bridge caused by the County, the Board will have effectively prevented KCSR from obtaining the full constitutional value of its assets and provided a windfall to Riffin by compensating Riffin for something that the Board has already determined has a zero value. Moreover, the actions that give rise to this filing relate to actions taken by Warren County, not KCSR, and it is legally unsupported, unprecedented, and entirely inefficient for the Board to make KCSR a proxy for a third party whose independent actions have precipitated this phase of the OFA proceeding unnecessarily. For both of these reasons, KCSR should not be held accountable for any alleged “increased costs ”

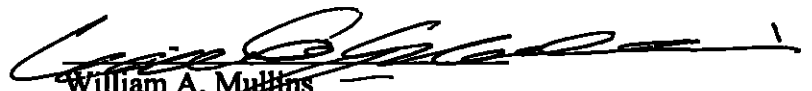
KCSR’s legal challenges to the Board’s February 22 Decision would likely be moot if the Board finds, as it should, that the Bridge was in such poor condition before it was partially dismantled that it was not usable and would have had to be replaced anyway. Notwithstanding KCSR’s legal arguments regarding the propriety of awarding

³³ On April 11, 2008, E&R filed a “Supplement” to the E&R Request, in which they now claim that their compensable increased costs include \$6,940 worth of unspecified “professional fees,” “document reproduction costs,” and “courier fees,” which collectively increase E&R’s total claim to \$244,550 00 KCSR objects to the Supplemental request as both untimely and unjustified. These are nothing but customary litigation costs, which are borne by the party that has incurred them, and they are not compensable here. (KCSR has found no precedent to support the award of litigation costs to E&R in cases such as this one) In any event, as with their original request for compensation, these new costs are not substantiated and are completely undocumented. By E&R’s logic, KCSR’s substantial costs in responding to E&R’s various procedural maneuvers in this OFA process serve only to discount the value of the subject rail assets, and thus further deprive KCSR of its property without due compensation

"increased costs" to Mr. Riffin, KCSR has proven that, at most, Mr. Riffin's increased costs associated with the County's partial dismantling of the Bridge would total \$19,277. For these reasons, the Board should deny the E&R Request and Supplement and find that Mr. Riffin is entitled to none of the compensation he seeks, or in the alternative, it should find that Mr. Riffin's "increased costs" will be no more than \$19,277.

Respectfully submitted,

David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
Cathedral Square
427 West 12th Street
Kansas City, MO 64121-9335



William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave, N.W.
Suite 300
Washington, DC 20037
Tel: (202) 663-7823
Fax: (202) 663-7849

Attorneys for The Kansas City Southern
Railway Company

Dated: April 14, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply To Request For Compensation Due To Increased Costs Of Restoring Line To Service Caused By Partial Dismantling Of The Glass Road Bridge by mailing copies of the same via prepaid first class mail to all parties of record in these proceedings or by more expeditious means of delivery

Dated at Washington, D C. this 14th day of April, 2008



Robert A Wimbish

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

EXHIBIT A

**VERIFIED STATEMENT OF
JOHN E. DUNSWORTH**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

EXHIBIT A

**VERIFIED STATEMENT OF
JOHN E. DUNSWORTH**

My name is John E. Dunsworth. I am a Bridge Specialist and Senior Project Manager with TranSystems. My business address is 2400 Pershing Road, Suite 400, Kansas City, MO 64108. I have been retained by the law firm of Baker & Miller PLLC to provide testimony concerning the increased costs that a party may incur for restoring service over a particular bridge owned by The Kansas City Southern Railway Company ("KCSR"), located in Warren County, MS, which increased costs were the result of Warren County road crew that partially dismantling the bridge without permission from KCSR.

QUALIFICATIONS AND EXPERIENCE

As background, my railroad career and experience started in 1967, when I began work in the Engineering Department of the Missouri-Kansas-Texas Railroad. In 1968, I joined the

Engineering Department of the Missouri Pacific Railroad ("MoPac"), where, in 1973, I was promoted to Bridge & Building Supervisor. In 1983 I was promoted to Bridge and Building Superintendent for MoPac's Western District, a position I held until 1986, following the merger of MoPac with the Union Pacific Railroad Company ("UP") As MoPac's Bridge and Building Superintendent, I was in charge of the safety, maintenance, and construction of various railroad structures along MoPac's Western District, including, of course, bridges

The MoPac-UP merger produced a new position of General Bridge and Building Supervisor, which position I assumed from July 1, 1986 until October of 1987, when I became UP's Manager of Construction. As UP's Manager of Construction, I oversaw the building of an average of sixty six structures per year for the next several years

In 1995, I became UP's system-wide Manager of Bridge Construction, a position that required me to oversee the inspection, planning, and management of UP's various construction projects, including those undertaken by contractors. In this position, I oversaw and approved projects entailing average annual invoices of \$50 million. In 1998, I became UP's Director of Structures based in Houston, TX, in which position I was responsible for the inspection, rating, maintenance, and construction of structures on UP's Southern Region As Director of Structures, a position I held until my retirement from UP on April 1, 2006, I oversaw 260,000 linear feet of timber railroad bridges

I began in my current position with TranSystems on May 1, 2006, where I serve as Bridge Specialist and Senior Project Manager Attached as Appendix 1 is a brochure that describes TranSystems' various areas of expertise in and services provided to the freight rail industry.

Given such extensive qualifications and experience with bridge maintenance and construction, I am well qualified to serve as an expert for the purposes of this verified statement, which will focus upon certain costs associated with restoring a specific railroad bridge on the KCSR system.

BACKGROUND AND PURPOSE OF STATEMENT

I have been informed that, in connection with the above-captioned matter, KCSR has obtained Surface Transportation Board ("STB") authority to abandon a rail line in Vicksburg and Warren County, MS (the "Line"). The Line is currently the subject of an "offer of financial assistance," or "OFA," whereby James Riffin and Raymond B. English ("E&R") hope to acquire all or a portion of that Line. I have also learned that the Line includes a bridge at approximately milepost 229.80 spanning Glass Road ("Glass Road Bridge" or the "Bridge"). Evidently, following the initiation of the OFA process in this proceeding, and without the consent of KCSR, Warren County began to dismantle the Glass Road Bridge, but Warren County stopped such dismantling activity once KCSR learned of Warren County's actions and KCSR informed Warren County to stop. As I understand the process, E&R, if they were to purchase the Line, would be entitled to acquire the Bridge in the same condition for which E&R had valued the Bridge in their OFA and that, upon acquisition, any costs associated with restoring the Bridge to service would have been borne by E&R. However, as a result of Warren County's actions, the STB has permitted E&R to provide evidence of the additional costs, if any, that Mr. Riffin would incur in returning the Glass Road Bridge to service in light of Warren County's actions.

On March 24, 2008, E&R filed evidence intended to show that they would be entitled to \$237,610.00 in compensation from KCSR, which amount, in E&R's view, represents the increased costs that E&R would have to incur to restore the Glass Road Bridge to service. Based

upon of my evaluation of KCSR bridge records, an on-site inspection of the Glass Road Bridge, and consultations with representatives of Warren County's road crew supervisor, Mr. Richard Wymans, it is my opinion that Warren County's partial dismantling of the Glass Road Bridge would increase E&R's total restoration costs by \$19,277

DISCUSSION

I. Basic Assumptions of My Statement

I understand that I have been retained to assist in addressing a very specific issue in this STB proceeding concerning the Glass Road Bridge. The STB has permitted Mr. Riffin, in connection with his desire to acquire a segment of the Line described as the "Remainder" (the portion of the Line along which the Glass Road Bridge is situated), to request the Board to determine the compensation, if any, owed by KCSR due to any increased costs of restoring the Remainder to service resulting from Warren County's partial dismantling of the Bridge. E&R supplied evidence on this issue on March 24, 2008, and KCSR has been permitted to respond. In accordance with the Board's decision on the matter and based upon conversations with KCSR's counsel, it is my understanding that the Board contemplated the possibility of awarding "compensation" to E&R (assuming Mr. Riffin¹ actually buys the Remainder) in an amount representing the difference, if any, between – (a) the costs that Mr. Riffin would have incurred to restore service over the Glass Road Bridge absent Warren County's actions, and (b) the costs he would incur (and will avoid) to restore service over that Bridge now that Warren County has partially dismantled it. Specifically, if Mr. Riffin's costs under (b) are higher than under (a), then the Board could order compensation.

¹ As I understand the Board's decision, "compensation" (if any) would not be due to E&R collectively, but rather to Mr. Riffin, who, in his individual capacity, proposes to acquire the Remainder

Based upon my understanding of the Board's decision on possible compensation due to Mr. Riffin, I have applied the following basic assumptions in preparing my verified statement:

- The Glass Road Bridge is an older structure, with the most recent bridge reconstruction having occurred in 1966. This Bridge has been out of service for more than 15 years, and, during that time, probably never was maintained.
- Because of the age of the Bridge's components, it would be a windfall to Mr. Riffin to calculate the cost of Bridge restoration on the basis of entirely new components when suitable used components are available at lower or no cost.
- Labor costs associated with Glass Road Bridge restoration may be considered "compensable" only where such costs would not have been incurred but for the actions of Warren County.
- The Board's decision to address "increased costs" presupposes that Bridge restoration would be carried out as economically as feasible.
- To the extent that the Bridge would have required certain repairs or restoration even if Warren County had done nothing to the Bridge, such repair or restoration costs must be factored against the costs of restoring the Bridge to operating condition after Warren County's actions.

II. Status of Glass Road Bridge as of March 12, 2008

The Glass Road Bridge at approximately milepost 229.80 is a rail overpass over Glass Road. It was a ballast deck bridge with two timber approach spans and a center ballast deck steel beam span. The basic configuration of the Bridge can be seen in Exhibit DLS-1 to the Verified Statement of Donald L. Steele ("V S Steele"), attached to E&R's March 24 filing to the STB. The total length of this structure is 109'-6" according to the bridge inspection reports supplied to me by KCSR. The first segment of the Bridge consists of a ballast deck timber trestle, built in 1966, and is 35 feet in length with three timber pile bents. Segment two had a sub structure of timber pile trestle which supports the steel beams and timber stringers to take bearing. Segment three consisted of eight 118" x 39'-6" steel beams supported by three timber pile bents (bent numbers 4 through 6), bent 5 had seven timber pilings and bents 4 and 6 had 12 timber pilings.

each to provide bearing for the steel spans and the timber stringer approach spans. The steel beams were installed in 1922. The fourth segment of the bridge was a ballast deck timber trestle, built in 1966, and was about 35 feet in length with three timber pile bents. The bridge inspection reports supplied to me indicate that the clearance over the roadway was 9'-4."

On March 12, 2008, I personally inspected the Glass Road Bridge in connection with preparing this verified statement. At that time, I found that the rail, other track material, and ballast had been removed from the bridge. In addition, the timber ballast decking and ballast retainers had been removed from the entire length of the structure. The stringers had been removed from both timber approach spans, and the timber caps from four interior timber bents had also been removed.² The piling in the bents 7 and 8 had been broken off at the ground line. All of the above Bridge components have been disposed of and are no longer available.

I noted that timber bents 4 through 6 were complete and supporting the steel beams of the center span. The timber pilings were in place for timber bents 2 and 3, but the timber caps had been removed. Timber bent 3 has a broken timber sway brace, which appears to have been caused by Warren County's actions in dismantling the Bridge. I also noticed that the timber cap in timber bent 9 is defective, although this timber cap would not need to be replaced to permit restoration of service over the Bridge.

The two timber backwall bents were still in place, and the timber cluster bents supporting the steel beams over Glass Road were also in place, although it appears that they may need minor repair in connection with any restoration of service.

Mr. Wymans, the Warren County road crew supervisor who oversaw the Glass Road Bridge dismantling activities, has advised me that the ballast decking, ballast retainers, and track

² The timber stringers were ten-ply chord – 7"x16"x35' – for each approach span with the bearings at bents four and six being skewed in configuration.

ties that had been removed were all badly deteriorated and had been disposed of with the other missing timber materials at Warren County's Jeff Davis landfill. Mr. Wymans also informed me that the ballast on the bridge was badly fouled, which, along with the abundance of vegetation depicted in pictures taken of the Bridge before Warren County partially dismantled it, indicate that this ballast needed to be replaced. Given the likely age of these ballast decking timbers and the amount of vegetation that photos show growing on the Bridge, I would agree with Mr Wymans that the ballast decking, ballast retainers, crossties and the ballast itself were too badly deteriorated to be of continued use

As part of my inspection, I photographed the existing Bridge structure and inspected the steel beam spans and remaining timber components. These photographs are attached to my statement as Appendix 2

III. Mr. Riffin's Increased Costs to Restore Glass Road Bridge to Service

Based upon my personal, on-site examination of the Glass Road Bridge, my evaluation of the Bridge components, my consultations with Warren County personnel who oversaw the partial dismantling of the Bridge, and bridge records supplied to me by KCSR, I have determined that the increased costs associated with returning this Bridge to operating condition would not be nearly as involved or as costly as E&R would have the Board believe. In my opinion, Mr Riffin faces \$19,277 in increased costs to return the Glass Road Bridge to operating condition in light of its current situation, which is far less than E&R claim is the case – \$237,610

In preparing my statement, I have reviewed E&R's "Request for Compensation Due to Increased Costs of Restoring the Line to Service Caused by Partial Dismantling of the Glass Road Bridge" (the "E&R Request") giving particular attention to the verified statements that accompanied the E&R Request. E&R insist that, with the exception of vegetation removal and

the replacement of “some” track ties, the Glass Road Bridge was in fully “serviceable” condition just prior to Warren County’s actions. See E&R Request at 5. E&R present no evidence for such a statement. E&R catalogue everything that they claim needs to be replaced or restored to return the Bridge to the condition in which it ostensibly existed just prior to Warren County’s actions, as is set forth in Mr. Steele’s verified statement. Again, E&R claim that Mr. Riffin’s increased costs to restore the line to service due to Warren County’s actions total \$237,610.00. They offer no offset for any work that would have had to have been done even in the absence of Warren County’s actions, because they insist that all of the restoration costs included in their Request would have been unnecessary had Warren County not partially dismantled the Bridge.

In support of their \$237,610.00 figure, E&R rely particularly on Mr. Steele’s verified statement and spreadsheet (V.S. Steele at Exhibit DLS-2) setting forth estimates for labor and contract costs, material costs, and equipment costs.³ One of the apparent assumptions in Mr. Steele’s cost estimates is that the Glass Road Bridge must be rebuilt exactly to its prior configuration using all new materials, even though less expensive restoration alternatives exist (as I strongly suspect Mr. Steele is aware). Unlike Mr. Steele, I have assessed the Bridge’s current situation in person. Based upon that assessment, I propose restoring the operability of the Bridge without incurring the vastly higher costs of rebuilding it to the exact same configuration in which it had existed before it was partially dismantled by Warren County. I would use frame bent construction and sills in bents 7 and 8 as substitutes for the broken off pilings, and would attach my frame bents to the base of the pilings where they remain imbedded.

³ E&R and Mr. Steele separately make clear that Mr. Steele did not undertake an on-site inspection of the Bridge as I have done. Rather, Bobby Carpenter, another of E&R’s supporting witnesses, did so, photographed the Bridge and prepared inspection notes for Mr. Steele’s use. E&R’s witnesses do not appear to have been retained for the purpose of checking or developing Mr. Steele’s cost estimates, although they endorse, with limited discussion, Mr. Steele’s cost estimates.

in the ground. My objective was to find the most economical way to return the Bridge to operating condition, which is what any rail operator likely would do if it planned to restore service over the Remainder. My approach to the Bridge restoration does that while preserving the basic operating and safety capabilities of the old design. In short, to return the Glass Road Bridge to operating condition would entail the following additional remedial actions *that would not have been necessary to do if Warren County had not done what it did* ⁴

- (a) Excavate at the ground line of bents seven and eight and install frame bents on timber sills on the piling.
- (b) Install frame bents, including piling, caps, bracing, timber sills and all associated hardware.
- (c) Replace the timber caps on timber bents 2 and 3, including all associated hardware
- (d) Replace 4 of the 35'x8" x16" timber stringer chords in a ten ply configuration, including all associated hardware
- (e) Cut stringers with the correct panel points and the joints placed as to have 100% of the joints extend across each interior timber cap

The biggest differences between my cost estimate and Mr. Steele's is that Mr. Steele presumes that the pilings that Warren County had removed would have to be re-installed,⁵ and that the ballast decking timbers and ballast which Warren County removed could have been used and did not need to be replaced ⁶ In so doing, Mr. Steele assumes the Bridge must be rebuilt to

⁴ As I will explain below, there are other remedial actions that Mr. Riffin will have to take to restore the Bridge to service, but those remedial steps would have been necessary regardless of Warren County's actions, and so I do not include them here.

⁵ This accounts for the 50-foot treated piles included in the Materials section of Mr. Steele's Exhibit DLS-2, as well as the labor and equipment costs (that I will discuss below) that are specifically related to the installation of such pilings. Assuming for the sake of argument that it were necessary to reinstall such pilings, I believe that Mr. Steele has overestimated how many 50-foot pilings would be needed. By my estimates, 12 50-foot pilings are all that would be needed (again assuming that it were truly necessary to reinstall the pilings)

⁶ The 4"x10"x16' and 8"x12"x20' treated timbers, deck waterproofing, and the deck ballast inputs in the Materials section of Mr. Steele's cost estimate spreadsheet (Exhibit DLS-2) are

the precise configuration that existed prior to Warren County's actions. I, on the other hand, propose an equally effective, but far less costly process to restore the Bridge to operating condition. Specifically, the best restoration process for the Glass Road Bridge would entail the use of the pilings in timber bents 7 and 8 by excavating at the ground line and cutting the pilings in each bent to a uniform elevation. Upon each piling I would then attach a framed bent with timber sills on each set of existing timber pilings in bents 7 and 8.

This design represents good construction practice of setting a frame bent on usable pilings, as opposed to the expensive process of mobilizing a crane and using pile-driving equipment to install all new pilings. The frame bent process outlined here is used by most Class I railroads in my experience as a cost-effective method to replace defective pilings or to replace pilings due to fire or other such damage. Although I propose repairing the Bridge in a manner that differs from Mr. Steele's proposal, I am certain that the Bridge, restored to service as I have proposed, would be just as safe and as effective as restoring the Bridge to its original configuration and it would be fully capable of handling rail traffic at maximum speeds of up to 25 miles per hour.

I will now turn to a discussion of Mr. Steele's labor and contract costs, material costs, and equipment costs, and will compare his cost estimates to my own to show that Mr. Steele's estimates include cost inputs that are unnecessary, excessive, and include cost inputs that Mr.

components associated with restoring ballast decking and ballast. Mr. Steele's equipment rental and labor costs also account for the reinstallation of such timber decking and ballast. As I will explain more fully below, the replacement of ballast is not an "increased cost" resulting from Warren County's actions. The photos that I have seen of the Bridge before it was partially dismantled, and the fact that the Bridge had been out of service for so long, indicate that the ballast that had been on the Bridge was fouled and would have had to be replaced anyway. Moreover, the bridge end ballast was not affected by Warren County's activities.

Riffin would have had to incur even if Warren County had not partially dismantled the Glass Road Bridge

A. Labor and Contract Costs

Mr Steele claims that the “increased” Labor and Contract costs alone will run \$128,280. The largest inputs into this general cost category are Mr. Steele’s estimates for mobilization (\$25,000), de-mobilization (\$15,000), and engineering (\$15,000). Although not clear from his statement, it appears that Mr Steele attributes his mobilization and de-mobilization costs to the emplacement of a work crane. A work crane would only be necessary for the use of a pile driver to replace the pilings that Warren County had removed. But, as I have indicated, the Bridge can be restored to service without the need to install new pilings, because added frame bents would be a suitable and more economic alternative to new (replacement) pilings. Because the added frame bents would be a far more economical substitute for pilings, Mr. Steele’s crane mobilization/de-mobilization costs are unnecessary. For the same reason, Mr Steele’s “cut off pile” and “drive pile” labor input should also be disregarded entirely.⁷

I am at a loss to explain why Mr Steele has included an engineering input here. As a general matter, engineering costs are only required in connection with the installation of a new bridge, not an existing one. The fact that part of the Glass Road Bridge has been partially dismantled does not warrant or require incurring the cost of hiring an engineer, and this would be so even if the Bridge were to be somewhat re-configured, as I have proposed. All that is required here would be the measurement of timber components and the use of a builder’s level for the piling elevations, and these do not require the services of an engineer.

⁷ The “cut off pile” estimate is inflated in any event. Assuming for the sake of argument that pilings were in order here, such a project would require only 12 50-foot treated piles, not 24

Mr. Steele has also included labor costs for installing ballast boards and ballast guards, deck waterproofing, and installing ballast (which presumably includes ballast for the decks and the bridge end) But I dispute these as truly “increased” costs, because they would have to be incurred even if the Bridge had remained intact. This point bears further discussion. Given the likely age of the ballast, ballast boards and ballast guards on the Bridge, and in light of the vegetation that pre-dismantling photos depict as growing on the bridge, it is very likely that these bridge components were spent and would have needed to be replaced regardless of Warren County’s actions. Mr. Wymans, who oversaw Warren County’s partial dismantling of the Bridge, confirmed during our conversations that these Bridge items were indeed rotten (in the case of the boards and guards) and fouled (in the case of the ballast). Thus, had Warren County done nothing to the Bridge, Mr. Riffin would still have had to replace these items at his own cost to return the Bridge to operating condition.⁸

For these reasons, I do not agree that the costs of installing ballast boards and ballast guards, deck waterproofing, and installing ballast⁹ are “increased costs” that should be factored into E&R’s request for compensation. What is more, because the ballast boards, ballast guards and ballast would have to be replaced in either event, Warren County has actually *decreased* Mr. Riffin’s contractor costs by saving him the cost of removing and disposing of these spent items.

⁸ I note that Mr. Riffin asserts that, but for Warren County’s actions, the Bridge would have needed only to have some vegetation removed and some ties re-installed to return it to use. Based upon my experience with such bridges and my investigation here, I believe that Mr. Riffin has purposely overstated the pre-dismantled condition of the Bridge, so as to inflate his list of allegedly “increased” costs. Further, the fact that Mr. Riffin admits to the poor condition of the ties on the Bridge reinforces my view, and the view of Mr. Wymans, that the ballast decking was rotten and would have needed to be replaced in any event.

⁹ The bridge inspection records that have been supplied to me and to Mr. Riffin indicate that the south end approach to the Bridge was in need of ballast fill decades ago. See Appendix 3 (attached). Based upon my personal inspection, it appears that very little ballast work would need to be undertaken to address this pre-existing condition.

I estimate that, to remove these items and arrange for their disposal at a proper landfill, Mr. Riffin would have incurred the following costs:

Trackhoe rental (2 10-hour days at \$65/hour)	\$1,300
Dump truck rental (2 trucks for 2 10-hour days at \$60/hour each)	\$2,400
Bridge supervisor (1 worker for 2 10-hour days at \$45/hour)	\$900
Bridgemen (2 workers for 2 10-hour days at \$25/hour each)	\$1000 ¹⁰
Worker food & lodging (for 3 workers at \$100.00/worker/day)	\$600
Landfill fees (6 truckloads at \$50/truckload)	\$300
Total costs of removal/disposal	\$6,500

As my estimate immediately above reflects, because the ballast decking and ballast were spent and would have to be replaced in any event, Warren County has saved Mr. Riffin contractor expenses by removing and disposing of those items for him. Thus, to the extent that my statement shows any truly increased costs to Mr. Riffin resulting from Warren County's actions, I will offset such increased costs by the above-calculated \$6,500 of decreased costs.

I also dispute Mr. Steele's pre-grading and finish grading labor cost inputs, because I see no need for such work, unless it is to be done in connection with pile driving, which, as I have already shown, is unnecessary. I have instead provided for excavation work, where it will be required around bents 7 and 8 in anticipation of the installation of a set of sills.

While I agree with Mr. Steele that stringers will need to be installed to restore the Bridge to service, I disagree with Mr. Steele's labor costs for this work. Mr. Steele presumes that such work will require 5 days to complete with his contractor team. This is excessive, and seems to

¹⁰ My estimates assume three workers total spending 1.5 days to remove and dispose of the rotted timber and fouled ballast, and 0.5 days for site cleanup (for ballast on roadway, timber remnants, etc.).

be predicated on working on an active rail bridge with no direct road access. This Bridge is exceedingly road-accessible and has no rail traffic to disrupt work. Accordingly, under my unit costs, the necessary stringers can be installed for a total labor cost of \$5,000 (the equivalent of two day's work under my presumed contractor crew)

My daily labor and contract and equipment costs presume the following laborers and equipment. The contractor shall furnish a supervisor, operator, and two bridgemen equipped with hand and power tools, safety PPE, a pick-up truck, and a trackhoe at \$2,100 per ten-hour day plus \$400.00 per day for expenses – a total contractor and equipment cost of \$2,500.00 per day. My labor and equipment cost components are itemized as follows:

- Supervisor (Bridge Qualified) \$45.00 per hour (\$450.00/day)
- Operator (Machine Operator Qualified). \$35.00 per hour (\$350.00/day)
- Bridgemen (2) 2@ \$25.00 per hour (\$500.00/day)
- Trackhoe (fully fueled and maintained): \$65.00 per hour (\$650.00/day)
- Pick-up truck (fully fueled and maintained): \$15.00 per hour (\$150.00/day)

Sub-total: \$2,100.00/day

Expenses – food & lodging 4 workers at \$100.00 per worker (\$400.00 /day)

Total Daily Labor and Equipment Cost: \$2,500/10-hour day

The scope of work was broken into the following list with cost per each item:

- Unload timber/materials from Vicksburg Yard, transport to work site (two crew days) \$5,000
- Trucking service to transport timbers/materials (at \$95/hour for one 10-hour day). \$950
- Set four timber caps and install hardware for same (one crew day): \$2,500

- Cut stringer timbers to length; set stringers, secure/install hardware (two crew days):
\$5,000
- Set stringers in place (one crew day):
\$2,500
- Excavate around bents 7 and 8; cut piling to correct elevations (one crew day):
\$2,500
- Set sills and set frame bents and complete bolting in place (one crew day)
\$2,500
- Install sway bracing and clean-up @ work site (one crew day)
\$2,500

Total of nine crew days (including equipment costs and trucking): **\$23,450**

Below is a table comparing Mr. Steele's labor and contract estimates with mine.¹¹

Steele	Dunsworth	Explanation for difference
Mobilization (1) at \$25,000	None	Mobilization necessary only in the event of pile driving, no pile driving required
Pre-grading (1) at \$6,750	Excavation around bents \$2,500	Pre-grading not necessary (no pile driving), excavation as preparation for installation of supporting frame bents
Cut off pile (24) at \$100 each	None	No piles will be installed
Drive pile (5 days) at \$3,375/day	None	No piles will be installed
Install caps (5) at \$675 each	Install caps (4) at \$2,500	Only four caps required, which can be installed in one contractor day
Install stringers (5 days) at \$3,375/day	Install stringers (3 days) at \$2,500/day	Number of days required (Steele contractor hours/day unspecified); different daily cost
Install Ballast Boards (140 feet) at \$48.21/foot	Not included	Original item spent and would need to be replaced anyway
Install Ballast Guards (140 feet) at \$24.10/foot	Not included	Original item spent and would need to be replaced anyway

¹¹ Because I have factored equipment rental costs into my labor and contract estimates I will include here a general analysis of Mr. Steele's equipment costs, but will discuss those cost estimates more fully below.

Deck Waterproofing (140 feet) at \$48 21/foot	Not included	New decking/waterproofing would be required even if Bridge not partially dismantled
Ballast (1 day) at \$3,375 00/day	Not included	Original item spent and would need to be replaced anyway
Finish Grading (2 days) at \$3,375/day	Excavation around bents \$2,500	Finish grading not necessary (no pile driving); excavation as preparation for installation of supporting frame bents
De-mobilization (1) at \$15,000	None	De-mobilization necessary only in the event of pile driving; no pile driving required
Engineering (1) at \$15,000	None	No engineering required to reconstruct an existing bridge
Crane (16 days) at \$975/day	None	Crane required only in the event of pile driving, no pile driving required
Leads/Pile Hammer (5 days) at \$425/day	None	Leads/Pile Hammer required only in the event of pile driving; no pile driving required
Loader (22 days) at \$500/day	Trackhoc (included in daily contractor cost of \$2,500 per day) – 9 days	Preferred multi-use equipment
Compactor (1 day) at \$100/day	None	Compactor required only in the event of pile driving; no pile driving required
Boom Truck (22 days) at \$220/day	Pick-up truck (included in daily contractor cost of \$2,500 per day) – 9 days	Pick-up truck more efficient multi-use vehicle for scope of repair project

B. Material Costs

Mr. Steele estimates that the total material costs associated with restoring the Glass Road Bridge to service would be about \$67,340 00. I believe that such material costs are too high, and includes material that is not necessary to return the Bridge to service. With the exception of the miscellaneous hardware needed for elements of the project (and two 14"x14"x18' timber sills), the balance of the materials that would be needed to return the Bridge to service are available at no cost to Mr. Riffin through KCSR as I will explain below.

The following material items in Mr Steele's cost estimate (see V S. Steele at Exhibit DLS-2) are not needed to restore the Glass Road Bridge to service and/or are not items needed to remedy Warren County's partial dismantling of the Bridge. 50 foot treated piles, 4"x16"x30' treated timbers, 8"x12"x20' treated timbers, deck ballast, and bridge end ballast. The treated piles are not necessary to restore the Bridge to operating condition, and merely inflate costs, as I have explained in my Labor and Contract Costs section, above ¹² The deck timbers should not be factored here because, as I have explained above, they were badly decayed, and would have needed to be replaced even if the Bridge had not been partially dismantled, as is also the case with the ballast itself. Finally, bridge end ballast installation, although perhaps necessary to some extent to return the Bridge to service, has nothing to do with increased costs to Mr Riffin. As mentioned above, my on-site inspection of the Bridge did not suggest that Warren County is responsible for any bridge end ballast loss. Record evidence indicates that the south end approach to the Bridge has been in need of fill ballast for decades. The north end approach ballast is still intact.

I would agree that four (not five) 14"x14"x14" caps will need to be replaced (My on-site inspection revealed that the fifth cap was already defective, and that this defect was not caused by action of Warren County.)

I would also agree with Mr Steele that the treated stringers removed by Warren County would need to be replaced, but I would use 20 (twenty) 8"x16"x15' and 20 (twenty) 8"x16"x30' stringers, where Mr Steele proposes 38 (thirty-eight) 8"x16"x30' treated stringers

I note that Mr Steele presumes the use of all new replacement parts in his materials estimates, even though I am confident that reusable timber materials are available at much lower

¹² Even if such an expensive option were to be deemed acceptable by the STB, I have already stated that the project would not require 24 pilings, but rather only 12

cost. It is my opinion that the use of new materials would generate a windfall for Mr. Riffin, because he would be highly unlikely to use all new materials if he were to restore this Bridge for typical short line operation. Neither Mr. Steele nor any of the other witnesses supporting the E&R Request justify the use of all new materials, and they ignore the fact that the use of such materials will result in giving Mr. Riffin a Bridge that is in far better shape than the one he would have acquired had Warren County not acted as it did.

Because I am aware that used materials can and should be used where available, my cost estimates are tailored to such economies. In this case, I attribute zero value to the caps and stringers that I agree will be needed to restore the Bridge. This is because these materials are available from KCSR at no cost to Mr. Riffin and KCSR has agreed to provide those materials to Mr. Riffin when and if service to/from the Bridge is ever restored.¹³ KCSR is currently moving forward with the restoration of a line of railroad in Texas extending from Victoria to Rosenberg. Part of that line restoration project involves removing existing (reusable) timbers and related components from numerous bridges and other structures, and replacing them with concrete girders and steel piling.

Under my employment with TranSystems, I am overseeing the work on KCSR's Victoria-Rosenberg project, and I am quite familiar with the structure replacement now ongoing on that rail line. I am also quite familiar with the surplus materials resulting from KCSR's project, including their condition and suitability for use in restoring the Glass Road Bridge to

¹³ It is my understanding that there is no track on the Remainder, on which portion of the Line the Bridge is located. Providing these materials to Mr. Riffin in advance of restoring the track and service over the Remainder would provide Mr. Riffin with a windfall – allowing him to sell such materials or use them elsewhere. KCSR has informed me that it will move all reusable materials from the Victoria to Rosenberg worksite to the Vicksburg yard and will retain custody and control of such materials until Mr. Riffin needs them for actually restoring service of the Bridge and the Line.

operating condition The timber structures removed during the course of KCSR's Victoria-Rosenberg project have not had rail traffic for several years, are reusable, and would be in equal or better condition than the still-usable timber components of the Bridge that Warren County had removed Specifically, all required 8"x16" timber stringers to complete the ten-ply stringer chords for the bridge can be furnished by KCSR at no charge Also, reusable timber caps, frame bents and bracing are available at no charge.

The only remaining cost component for these replacement materials would be the cost of transportation associated with moving this material to the Bridge. I have been advised, however, that KCSR would be willing to provide rail transportation from the Victoria- Rosenberg work sites to KCSR's yard in Vicksburg, MS, at no charge to Mr Riffin From there, I would expect that Mr. Riffin would have to arrange for transportation by truck to the Bridge. I have included such short-haul truck transportation costs in my labor and contract discussion above – one day of trucking service and two days of work crew time associated with loading at Vicksburg and then unloading a few miles distant at the Bridge.

I agree with Mr Steele that restoration of the Bridge will require the purchase and installation of miscellaneous hardware. Mr Steele estimates that such miscellaneous hardware would cost about \$2,500, which may be an accurate estimate for the costly manner in which E&R contemplate restoring the Glass Road Bridge to service. Under the bridge restoration method I am proposing, miscellaneous hardware¹⁴ would cost \$1,653, as follows

14"x14"x18' timber sill	2	\$200.00 each	\$400.00
¾"x18" bolts	24	\$5.00 each	\$120.00
overtight springs	84	\$2.00 each	\$168.00
malleable washers	84	\$2.00 each	\$168.00
¾" nut nuts	84	\$1.50 each	\$126.00

¹⁴ My miscellaneous hardware estimate includes certain timber items that would not be available from KCSR's Victoria-Rosenberg project.

clip angles	24	\$12 00 each	\$288.00
¾"x24" drift pins	96	\$3.00 each	\$288.00
brace board 4"x10"x18'	1	\$53 00 each	\$53 00
¾"x22" bolts	7	\$6.00 each	\$42 00

C. Equipment Rental Costs

I also find that Mr. Steele's equipment costs are far too high, because, as I have stated throughout, such costs are predicated upon reinstalling pilings that are not necessary to restore the Glass Road Bridge to service. In short, the following items under Mr Steele's equipment costs are unnecessary if one does away with the reinstallation of pilings and instead restores the Bridge to service as I proposed to do crane, leads/pile hammer, and compactor I also do not agree that a loader and boom truck are necessary in this case, because the work that will need to be done to restore the Bridge to service will require only the use of a trackhoe for the entire nine-day work period at \$650 per ten-hour day, and a pickup truck for a period of nine days at \$150 per ten-hour day. Total trackhoe cost for this project would be \$5,850, and total pickup truck cost would be \$1,350. Both equipment costs have already been factored in to my daily labor and contract costs in part III-A, above

IV. Total Increased Costs to Restore the Glass Road Bridge to Service

To summarize, I regard the following as the increased and decreased costs to Mr Riffin in connection with his stated intent to restore the Glass Road Bridge to service now that it has been partially dismantled by Warren County

Labor and Contract Costs ¹⁵	\$23,450
Material Costs.	\$1,653
Sub-total (all increased costs – pre tax)	\$25,103

¹⁵ Including trackhoe and pickup truck rental costs (which represent all of the equipment costs associated with this project).

Contractor tax (3.6269% of \$25,103)	\$910
Sub-total (all increased costs – with tax):	26,013
Decreased costs (ballast decking/ballast – pre tax).	(\$6,500)
Contractor tax savings (3.6269% of \$6,500)	(\$236)
Sub-total (all decreased costs – after tax):	(\$6,736)
Total (all increased costs less decreased costs)	\$19,277

This figure of \$19,277 reflects the net of “increased costs” and “decreased costs” to Mr Riffin in returning to the Bridge to working condition, and thus represents the maximum compensation that might be due Mr. Riffin were he to acquire the Remainder and restore service over the same.

CONCLUSION

To support his claim for “compensation,” the STB has permitted Mr. Riffin to provide evidence of the “increased costs” he might incur in restoring service over the Glass Road Bridge (or, more precisely, the Remainder) due to Warren County’s actions. Mr. Riffin and his witnesses have not done so. Instead, they seem to believe that the STB is offering to provide compensation so that Mr. Riffin may rebuild the Bridge exactly as it was configured before it was partially dismantled, using all new materials, and to a condition that would be better than that in which it existed on the day the OFA was filed. As such, Mr. Riffin and his witnesses propose a re-building plan that would maximize costs, rather than limit them. Mr. Riffin’s “maximum cost” is not what he should be entitled to. Instead, if he is entitled to any compensation at all (which is a legal matter that I do not address), then, at most, he should get the difference between what he would have spent to restore service over the Bridge absent Warren County’s actions versus the cost to restore it now in light of Warren County’s actions.

As I have explained in this statement, given Warren County's actions and the existing state of the partially dismantled Bridge, one does not need to rebuild the Bridge to its previous configuration using all new materials in order to restore service. In contrast, my estimate is based upon the costs of restoring the Bridge to serviceable condition minus the costs that Mr. Riffin would have incurred anyway if he had rebuilt the Bridge assuming no action by Warren County. My plan, which is fully consistent with existing Class I and shortline railroad operating and engineering practices, would compensate Mr. Riffin for the increased costs associated with restoring the Bridge to a fully operating and safe condition, but would not provide Mr. Riffin with the windfall he seeks.¹⁶ As such, if Mr. Riffin is entitled to any compensation as a result of Warren County's actions, then it should be \$19,277, not \$237,610

¹⁶ In my view, if the STB had not made available the opportunity for Mr. Riffin to seek compensation for Warren County's partial dismantling of the Bridge, I suspect that Mr. Riffin would embrace the Bridge rebuilding proposal that I have outlined above in restoring service over the Bridge as it exists today. In fact, were the Board to order "compensation" in the amount of \$237,610, as E&R have requested, there is no assurance that Mr. Riffin would actually undertake such a wasteful rebuilding of the Bridge. It is more likely that he would adopt the approach that I suggest and then pocket the difference so as to help offset E&R costs associated with acquiring the Line.

VERIFICATION

I, John E Dunsworth, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 14th day of April, 2008.



John E. Dunsworth

**VERIFIED STATEMENT OF
JOHN E. DUNSWORTH**

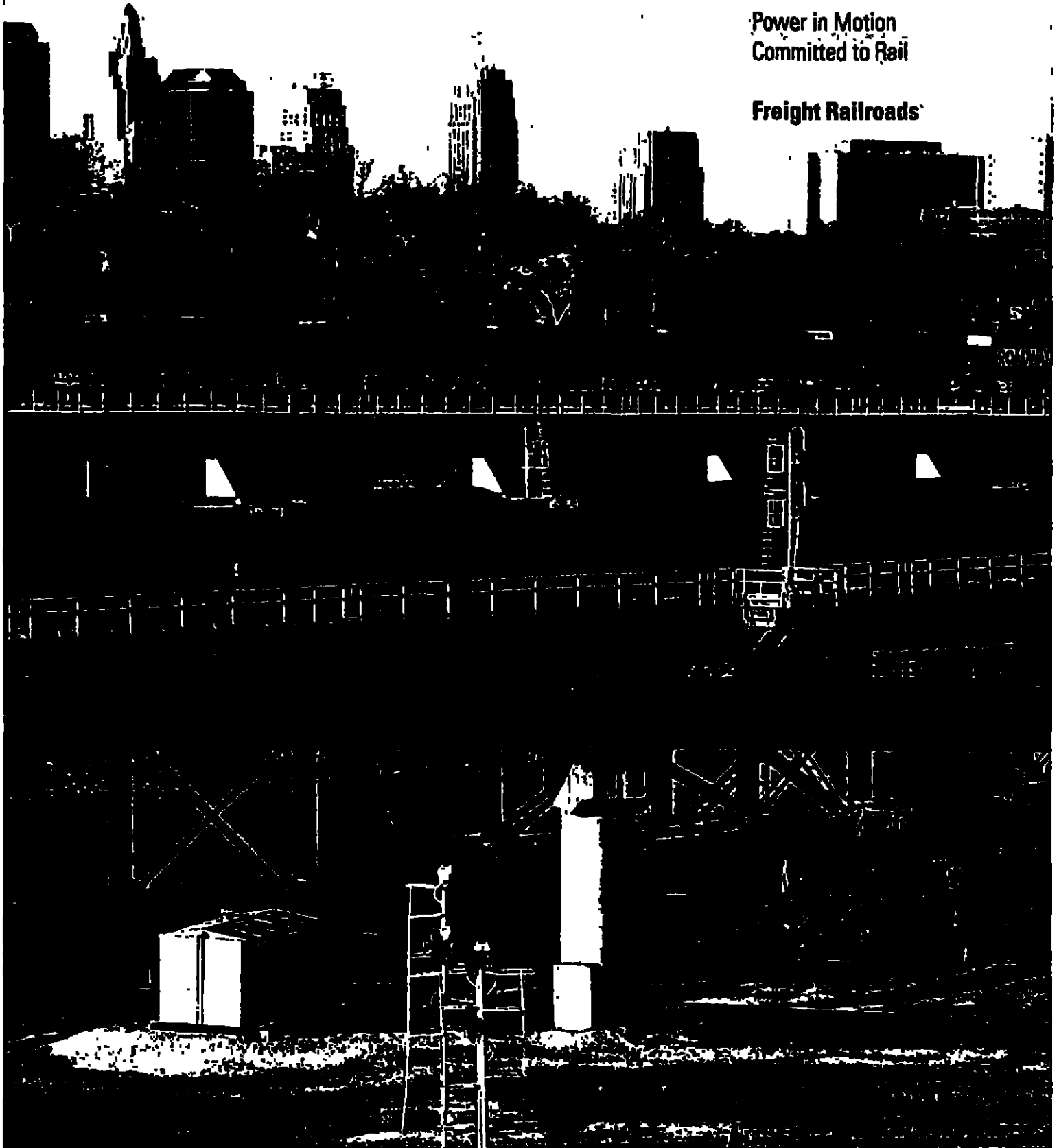
APPENDIX 1



EXPERIENCE | Transportation

**Power in Motion
Committed to Rail**

Freight Railroads





PARTNERS

HANDS ON

TranSystems' rail expertise encompasses financing, planning, design and operational services for track, site development and terminal yards. We bring solutions that improve capacity, reduce costs and increase flexibility in the dynamic and competitive rail industry. From the ground up, inside and out, switchers to spurs, we have a deep understanding and respect for this market. In fact, many of our key rail personnel are former long-term employees of major railroad companies. They bring a distinctive expertise to the table, one that can only come from true hands-on rail experience.

HEADS UP

To continually improve the efficiency, speed, safety and reliability of freight rail movement, that's the greatest challenge – because the cargo isn't waiting. Our ability to bring full architectural and engineering services; management and financial consulting; security expertise; real estate and right-of-way services; intermodal breadth; and construction management skills, puts TranSystems head and shoulders above the rest.

WE SERVE

- Class 1 Railroads
- Terminal Railroads
- Belt Railroads
- Regional Railroads
- Shortline Railroads
- State Rail Divisions
- Federal Railroad Administration



I N R A I L

TRANSYSTEMS - MEETING THE CHALLENGES

Across the Strategic and Built Environment

The ability of TranSystems to meet the transportation challenges of its clients rests firmly on the range of modal expertise, technical disciplines and consulting services we have gathered into one integrated business entity. We provide knowledge vertically within each mode of transport and horizontally across all the modes. Likewise, we have embraced the domains of management, real estate, and security consulting, meshed with the full range of the engineering and architectural disciplines. We thus have the ability to wring out handoff costs between disciplines otherwise contained in separate business organizations.

Our project management goals are the same as those of our clients. In fact, we require this of ourselves. We determine the most effective path forward towards project completion. We discover and execute economies without compromising the quality of the project. We are committed to gaining an understanding of the larger purpose and fit into the economy of the project or the program. Finally, we bring an awareness of the needs of both the client and the end user. We never lose sight of the fact that lives – and livelihoods – depend on the solutions we offer.

TRANSYSTEMS MARKET SECTORS

- Freight Railroads
- Passenger Rail and Transit
- States and Municipalities
- Airports and Air Carriers
- Shippers and Distributors
- Ports and Maritime
- Trucking and Automotive
- Energy and Communications
- Federal Government



TRANSYSTEMS' CONSULTING SERVICES

Services to the Freight Rail Sector

Design and Construction Engineering

Intermodal Facilities
Terminals
Terminal Maintenance and Repair
Switching Yards
Mainline Tract
Mainline Storage, Receipting and
Departing Tract
Off-Dock Port Facilities
Mainline and Branch Line Extensions
Transfer Facilities
Industrial Rail Sidings
Stormwater Retention/Retention
Cost Estimates and Specifications

Facility Operational Analysis, Benchmarking and Simulation

Process Definition and Mapping
Analytical Modeling
Transportation Operations
Security and Threat Analysis
Process Improvement

Management Consulting Services

Economic Analysis of Logistics
Market Demand Analysis and Forecasting
Supply Chain Assessment
Modal and Intermodal Strategic Planning
Rail Intermodal Cost Analysis
Industrial Redevelopment Consulting

Planning Services

Master Planning
Plotting
Feasibility Studies
Capital Programming
Energy Efficiency
Freight Mobility
Site and Facility Master Planning
Site Assessment
Urban, Regional and Community Planning

Real Estate Services

Track Agreement Exhibits
Right-of-Way Acquisition Services
Program and Project Management
Title Research
Negotiations
Appraisals/Value Analysis
Right-of-Way Cost Estimating
Relocation Assistance
Property Management
Document Recording

Security Services

Security Program Design and Development
Risk, Threat and Vulnerability Assessments
Operational and System
Auditing Assessments
Emergency Preparedness and
Recovery Planning
Facility Security Design
Strategic Master Security Planning

Other Preliminary and Final Design Services

Site Assessment, Development and Design
Architecture
Civil
Structural
Mechanical, Electrical and Plumbing
Feasibility and Impact Studies
Interior Design
Landscape
Routing Analysis
Signaling, Optimization and Lighting
Traffic
Utility Planning and Relocation

Structural

Bridge Design
Structural Inspection and Evaluations
Load Ratings
Hydraulic and Scour Evaluation

Surveying

Construction Staking
Accident Surveys
As-Built Surveys
Topographic Surveys

Permitting

408 Permitting
Flood Plain Mapping
Right-of-Way Applications
Easement Abandonments
Route Determinations
Zoning Changes
Variances and Special Exception Requests

Construction Management Services

Administration
Arbitration and Mediation
Inspection
Management
Materials Testing
Observation
Surveying, Staking and As-Built

www.transystems.com

800-800-5261

Transystems

Freight Rail Consulting

**VERIFIED STATEMENT OF
JOHN E. DUNSWORTH**

APPENDIX 2



<jdunsworth@transystems.com>
m>

03/18/2008 07:59 PM

To: <rwimbish@bakerandmiller.com>,
<wmullins@bakerandmiller.com>

cc

bcc

Subject: List of Structure Components to Match the E-MAILS with
photos 19 through 39- Glass Road

History: This message has been forwarded from [redacted]

Gentlemen,

Please find the following information concerning the E-Mail photos sent on 03/17/08 by this office.

Photo #	Structure Component in the photo
019	north abutment – bent one – of the abutment timber cap
020	defective cap in bent one – left side
021	piling in bent two without timber cap that was removed
022	piling in bent three without timber cap that was removed
023	north bearing of bent four
024	pile 4-5-6 in the north row of bent four – cluster bent
025	close-up of a stringer left at the site with damage on
bottom of stringer	
026	close-up of a second stringer left at the site
027	bent five – the center bent that divides Glass Road
028	pile six of bent five
029	north bearing of bent six – cluster bent
030	span four looking east
031	span five looking east
032	remaining piling in bent seven
033	remaining piling in bent eight
034	right side of bent eight with broken piling
035	left side of defective cap in bent nine
036	same cap – view from above the defect in timber cap in
bent nine	
037	steel beam span- northward from bent nine
038	cap nine and south timber headwall
039	bents seven and eight with the timber piling broken off

The E-Mail sent that has subject: third sets of photos has the photo number and structure component on that E-Mail.

I will E-Mail the list of Bridge Inspection Reports from Pete Goodman of KCSR, you will want to view the sheet that contains data for bridge # 229.80

Please call with any questions or comments

Thank You for this opportunity

John E Dunsworth

KCSR-007

John Dunsworth
Senior Project Manager



TranSystems
2400 Pershing Road, Suite 400
Kansas City, MO 64108

.



<jdunsworth@transystems.com>

03/17/2008 04:29 PM

To: <rwimbish@bakerandmiller.com>,
<wmulliens@bakerandmiller.com>

cc

bcc

Subject: Third set of photos for Glass Road

History: This message has been forwarded

Gentlemen,

Please find the following photos

Photo#

Structure component

040

left side of steel beam span

041

right side of steel beam span

042

south end of steel beam span

043

top left side of span five of steel beam span

045

right side of steel beam span at the north bearing

047

bent four-south face with galvanized steel ripped off of the

timber corbel blocking of this bent

Thank You

John E. Dunsworth

John Dunsworth
Senior Project Manager



TranSystems
2400 Pershing Road, Suite 400
Kansas City, MO 64108

www.transystems.com

Note: The information contained in this transmission as well as all documents transmitted herewith are privileged and confidential information. This information is intended only for the use of the individual or entity to whom it was sent, and the recipient is obliged to protect this information as appropriate. If the recipient of the e-mail, and/or the documents attached is not the intended recipient, you are hereby notified that any dissemination, distribution or reproduction, copy, or storage of this communication is

strictly prohibited. Thank you.  GlassBr03-12-08 043.jpg  GlassBr03-12-08 040.jpg  GlassBr03-12-08 041.jpg  GlassBr03-12-08 042.jpg

 GlassBr03-12-08 045.jpg  GlassBr03-12-08 047.jpg

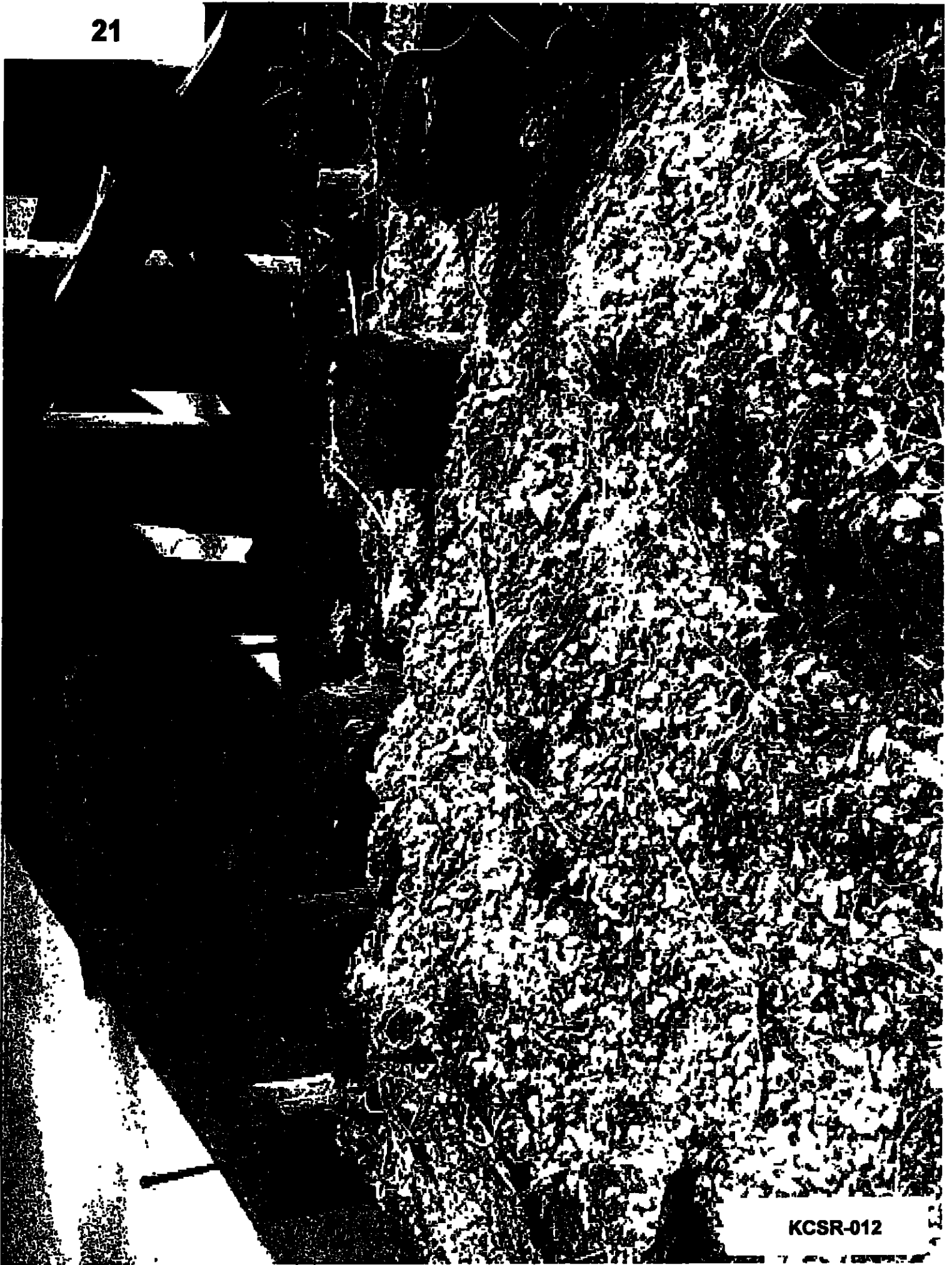
KCSR-009



2008 5 12



KCSR-011



KCSR-012



KCSR-013





2008 3 12

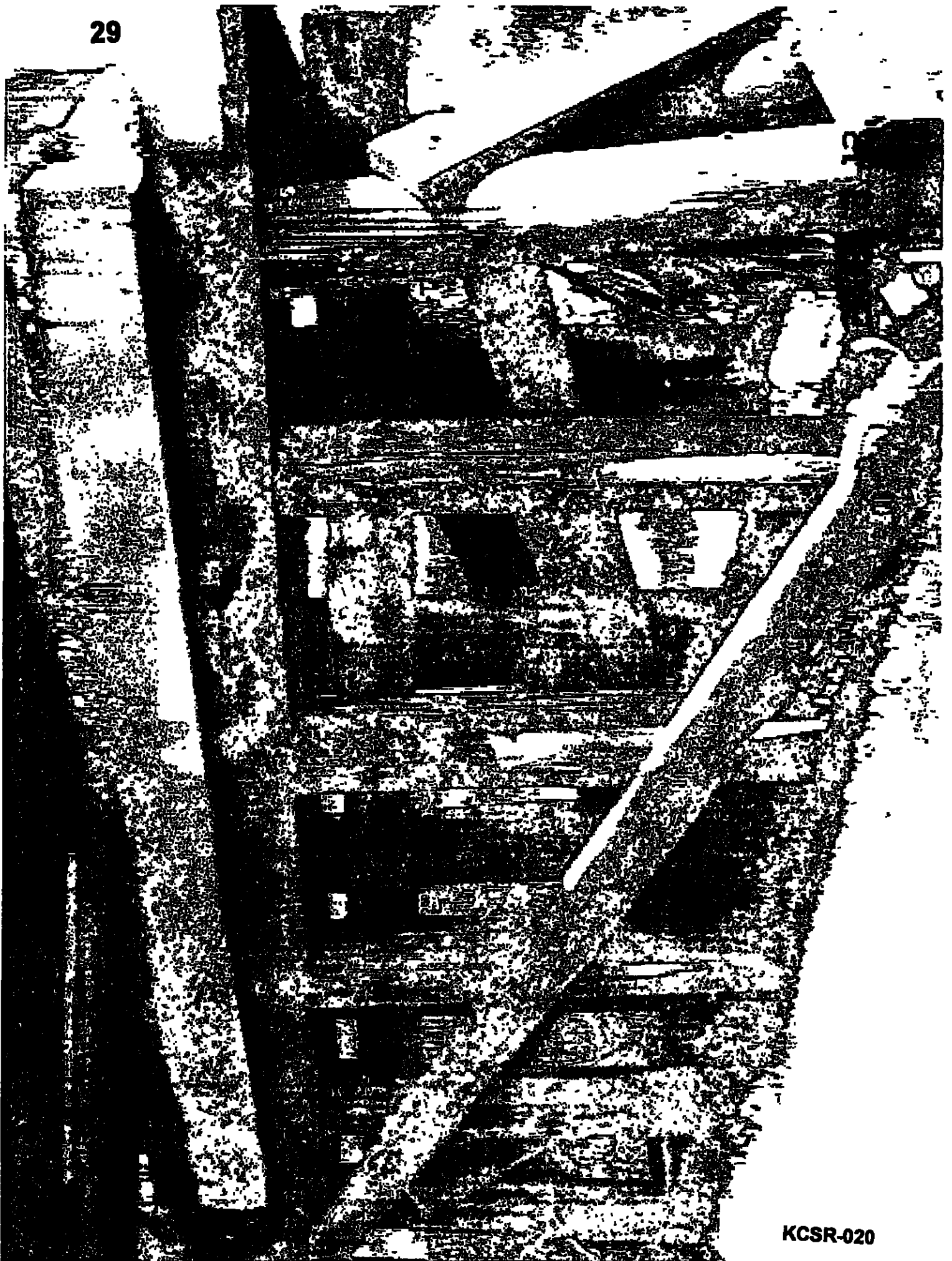
2002 3

CLEARANCE

12



21 E 8002



LOW
CLEARANCE



KCSR-021







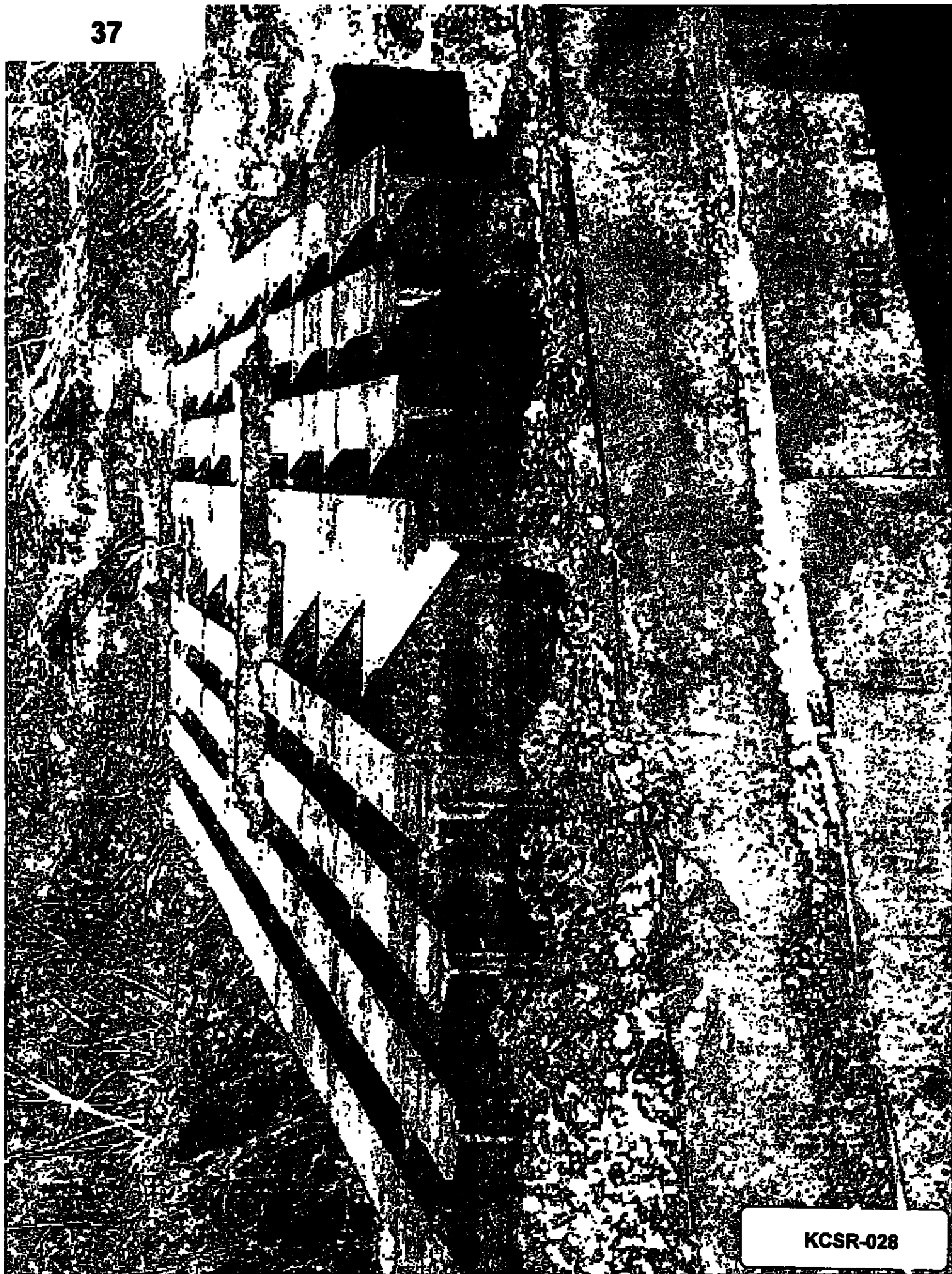


KCSR-025



2008 3 12
PI 8002

KCSR-027



KCSR-028



KCSR-029



KCSR-030



KCSR-031



2008







2008 0712

KCSR-037

**VERIFIED STATEMENT OF
JOHN E. DUNSWORTH**

APPENDIX 3

ILLINOIS CENTRAL GULF RAILROAD - BRIDGE INSPECTION REPORT - EB6

DIVISION: SOUTHERN

DISTRICT: VICKSBURG

STATE: MS

BRIDGE NO.: L 229.80

MILEPOST: L 229.80

OVER: ROAD (GLASS)

NEAR: Le Tourneau

TOTAL BRIDGE LENGTH: 109.5

SPANS										STRING				TIES										
										P				CAP				D	P	W	Y	CR		
										NI								E	A	A	ET	OE		
										UL	NO			SIZE				C	R	L	AO	NN		
SG	YEAR	NO	CON	TYPE		TOT	NO			ME	TYP	YR	SIZE	SIZE	YR	K	A	K	RS	DW				
		TR	TYP	& NO	LEN	LEN	HT	BENT					&TYP											
1	1966	1	BDY			35	14	3	6	10A			141414			D					G			
2	1966	1	SUB	TPP	2		14														G			
3	1922	1	STL	BMS	1	40	14														B		69	G
B-118X X39'6"																								
4	1966	1	BDY			35	14	3	6	10A			141414			D					G			

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

EXHIBIT B

ILLINOIS CENTRAL GULF RAILROAD - BRIDGE INSPECTION REPORT - EB6

DIVISION: SOUTHERN

DISTRICT: VICKSBURG

STATE: MS

BRIDGE NO.: L 229.80

MILEPOST: L 229.80

OVER: ROAD (GLASS)

NEAR: Le Tourneau

TOTAL BRIDGE LENGTH:

109.5

SPANS										STRING			TIES							
										P	CAP				D	P	W	Y	P	CR
										NI					E	A	A	ET	OE	
SG	YEAR	TR	TYP	& NO	LEN	TOT	HT	BENT	ME	NO&	SIZE	SIZE	SIZE	YR	K	A	K	RS	DW	
						LEN.				TYP	&TYP									
1	1966	1	BDT			35	14	3	6	10A	141414				B					G
2	1966	1	SUB	TPP 2			14													G
3	1922	1	STL	BMS 1	40	40	14								B			69		G
8-118X X39'6"																				
4	1966	1	BDT			35	14	3	6	10A	141414				B					G

COMMENTS:

7 PILE BENT IN CENTER OF SPAN?
CLEARANCE OVER DRIVE=9'4"

REPAIRS: Fill Behind So. Headwall (P4)

KCSR-038

DATE: 3-15-83 INSPECTOR: (JCM:Jag) B&B SUPV: ()

STRINGER CODES: A - 7X16, B - 6X14, C - 8X16, D - 7X16 LULAM

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

EXHIBIT C

Pete Goodman/KCS

09/20/2005 06 47 AM

To

Allen Pepper/KCS@KCS, Frederick L Peck/KCS@KCS, Glen H Ebeling/KCS@KCS, Thomas J Healey/KCS@KCS

cc

Subject

Re. Warren County request

Allen, I have met with Mr. Flanders at this bridge location and told him that if this section of track was not going to be used then we would certainly entertain the idea of removing this bridge if Warren County could dispose of the creosoted materials. We have not used this section of track for quite some time Cudzu has taken the bridge over and the rail is taken up South of this location. The beam span is too light for use to use anywhere in the track. The real reason he wants the low clearance bridge taken out is that he passes under it going back and forth from Vicksburg to his home and school buses cannot pass under this bridge. Mr. Flanders called me back and said that they could dispose of the materials. I later found out that this section of track may be leased by a contractor and told Mr. Flanders that I could not do anything with the bridge until I found out for sure. If anybody has any idea what we are going to do with this track I would like to know. My cost would only be 1 day for a contractor, but I don't want to remove the bridge if there is a possibility that this track may be used.

Thanks

Pete

Allen Pepper

09/19/2005 04 52 PM

KCSR-047

To: Frederick L Peek/KCS@KCS

cc: Pete Goodman/KCS@KCS, Glen H Ebeling/KCS@KCS, Thomas J Healey/KCS@KCS

Subject: Warren County request

County Supervisor Carl Flanders with Warren County, Mississippi is requesting that you contact him regarding the old bridge on our right of way south of Vicksburg near LaTourneu. His cell phone is 601-529-1715 and his home phone is 601-636-7750. He advised to call him on either regardless of the time.
Thanks



<<NotesLink1.ndl>> NotesLink1 ndl

-----Original Message-----

From: Pete Goodman

Sent: Monday, February 25, 2008 3:16 PM

To: Srikanth Honnur; David Reeves; Paul Rainer

Subject: Re: Bridge 229.8 Redwood Branch RE: need 2 things

David,

I know the bridge in question and the beam span over the roadway is too light for what we would want if we were to rebuild the track. The only thing worth anything with the bridge is the scrap cost of the beams. The substructure was timber and not in very good shape. I was approached years ago by the county and can dig up the old emails and

forward to you At that time I notified Legal and left it in their hands I was not aware that the county was taking the bridge down. I am in a staff meeting in Dallas now but will forward the emails to you tonight.

Pete

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

EXHIBIT D

REDACTED

SUBJECT TO PROTECTIVE ORDER

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

EXHIBIT E

**VERIFIED STATEMENT OF
PETE GOODMAN**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

**VERIFIED STATEMENT OF
PETE GOODMAN**

My name is Pete Goodman. I am the Director of Bridge Maintenance for The Kansas City Southern Railway Company ("KCSR"). My business mailing address is 4601 Shreveport-Blanchard Highway, Shreveport, LA 71107. The purpose of this statement is to support the conclusions contained in the statement of John E. Dunsworth concerning the limited cost necessary to repair damage caused to a trestle over Glass Road in Warren County, MS, by unauthorized partial dismantling of that structure.

I have worked for KCSR since 1978, and have been involved with maintenance of the company's bridges since 1987. I have held a series of positions with KCSR, each time gaining increasing responsibilities with respect to bridge maintenance. I began my experience with bridge maintenance for KCSR as a member of a bridge repair and maintenance gang. From there, I worked my way up to mechanic, then to assistant foreman, then foreman, then assistant supervisor, then supervisor, and then to my present position as Director of Bridge Maintenance.

From these 20+ years of experience with bridge maintenance and repair for KCSR, I have an in-depth knowledge of the variety of types and conditions of bridges on the KCSR system.

With respect to the trestle over Glass Road south of Vicksburg, MS, that is at issue in this case, I visited the structure in 2005 in order to meet with a local government official who wanted to talk about taking the bridge out. It was not my responsibility to tell the gentleman whether or not the bridge could be taken out, but I did pass his request along to KCSR management. The feedback that I got from management was that the bridge could not be removed until abandonment authority had been obtained from the Surface Transportation Board. My communications with Warren County officials about the bridge were all consistent with that instruction from management.

When I met with the local government official in 2005 about the trestle over Glass Road, I did make some observations about the condition of the structure. At that time, I noted that at least the deck boards and ballast retainers on top of the trestle would all have to be replaced, and that new ties and ballast would be needed before KCSR could even consider making use of the structure. Because portions of the structure were covered with kudzu and since I was not on site to assess the bridge for repair, I did not see and certainly did not inspect all of the components of the bridge. However, it was clear from my observations that substantial work would have to be done to put the trestle in a condition where it could be used again for train traffic.

I have reviewed the statement containing Mr. Dunsworth's assessment of the current condition of the Glass Road trestle and his estimate of the cost to return the structure to a condition comparable to its condition prior to the unauthorized dismantling of the structure by Warren County earlier this year. I have also looked at a number of photos that Mr. Dunsworth took of the structure when he visited it in March to gather the information for his statement.

Those photos include many detailed views of the remaining trestle structure and of the components of the trestle that were damaged or removed by Warren County.

From review of Mr. Dunsworth's statement and the photos of the trestle, I would agree that Mr. Dunsworth's proposal is the most reasonable and economical way to return the structure to a condition comparable to its condition before the County damaged it. Mr. Dunsworth provides advice to KCSR on many bridge construction, repair and upgrade projects. He also is very widely known and respected in the railroad bridge engineering community. Based on the explanation in his statement and my review of the photographs of the structure, I would conclude that if KCSR needed to repair the partial dismantling of the Glass Road trestle, we would do so as suggested by Mr. Dunsworth, in order to obtain a functional structure at a reasonable cost. By comparison to the methods and costs for restoring the trestle that have been suggested by the proposed buyers of the line containing this trestle, Mr. Dunsworth's conclusions are clearly the more reasonable, economical and sensible way of going about overcoming the damage done by the County's unauthorized actions.

VERIFICATION

I, Pete Goodman, verify, under penalties of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file the foregoing verified statement.

Executed on April ~~14~~, 2008


Pete Goodman

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
– ABANDONMENT PETITION FOR EXEMPTION –
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

EXHIBIT F

**VERIFIED STATEMENT OF
SRIKANTH HONNUR**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
- ABANDONMENT PETITION FOR EXEMPTION -
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

**VERIFIED STATEMENT OF
SRIKANTH HONNUR**

My name is Srikanth Honnur. I am the Director – Track and Bridge Construction for The Kansas City Southern Railway Company (“KCSR”). My business address is 427 West 12th Street, Kansas City, MO 64105. This statement supports the conclusions offered by Mr. John Dunsworth in this matter concerning the limited cost of repairing damage to a certain trestle near Vicksburg, MS.

My background as an engineer includes significant experience with bridges. I am a New York-certified Professional Engineer. Since 1994, my professional work has focused largely on bridges. Much of my experience has been focused on road bridges, but during nearly the past two years, I have been involved with railroad bridges as an employee of KCSR. Many of the principles and issues involved with railroad bridges are, of course, similar to those of road bridges.

My current responsibilities include direct supervision and management of design and implementation of KCSR railroad bridge construction. I also supervise and manage projects involving rail grade separations, which involve a bridge structure for either the roadway or the railroad. My other responsibilities include overseeing KCSR's coordination with the utilities that pass over or under KCSR's tracks, and reviewing industry track agreements. My responsibilities require that I be familiar with engineering issues involved in bridge construction. I am also familiar with assessing the condition of bridges.

I have reviewed a statement by Mr. John Dunsworth of TranSystems Corporation concerning the condition of and cost to repair certain damage done to an unused rail trestle structure over Glass Road near Vicksburg, MS. I have reviewed a number of photographs of Mr. Dunsworth's inspection of the structure in connection with my review and consideration of his statement.

I find Mr. Dunsworth's conclusions as to the condition and cost to restore the Glass Road trestle to its former condition to be well-documented, logically sound and acceptable from an engineering point of view. I also would affirm that the cost figures used by Mr. Dunsworth are consistent with those with which I have direct experience in my position as Director – Track and Bridge Construction.

Finally, I would note that Mr. Dunsworth is a widely-respected railroad bridge engineer, having many years' experience with a variety of bridge structures. I have worked with Mr. Dunsworth many times during the past 18 months, and I respect and appreciate his knowledge and expertise. Also, KCSR has such faith in his knowledge and experience that KCSR is using Mr. Dunsworth, through TranSystems, as part of the team helping KCSR to restore the Victoria-Rosenberg, Texas line to active service.

VERIFICATION

I, Srikanth Honnur, verify, under penalties of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file the foregoing verified statement.

Executed on April 11, 2008



Srikanth Honnur

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
– ABANDONMENT PETITION FOR EXEMPTION –
LINE IN WARREN COUNTY, MS**

**REPLY TO REQUEST FOR COMPENSATION DUE TO
INCREASED COSTS OF RESTORING LINE TO SERVICE CAUSED
BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

EXHIBIT G

**OFFICE OF
BOARD OF SUPERVISORS
WARREN COUNTY, MISSISSIPPI
913 Jackson Street
Vicksburg, MS 39183-2519**

Received

Legal Dept

**DAVID McDONALD
DISTRICT 1
WILLIAM H. BANKS, JR.
DISTRICT 2
CHARLES SELMON
VICE PRESIDENT, DISTRICT 3**

February 22, 2008

**WILLIAM F. LAUDERDALE, JR.
DISTRICT 4
RICHARD GEORGE
PRESIDENT, DISTRICT 5
DOT MCGEE, CLERK
PAUL WINFIELD, ATTORNEY**

**Mr. David Reeves
Kansas City Southern Railway
P. O. Box 219335
Kansas City, Missouri 64121-9335**


Re: Glass Road Railroad Trestle

Dear Mr. Recvcs:

We are writing you in regards to the old railroad trestle along an abandoned section of railroad that crosses over Glass Road in Warren County, Section 6, Township 14 North, Range 3 East. We have been informed that the abandonment process has not yet been finalized and that the trestle can not be removed until said process has been completed. We would, however, like to respectfully request that this section of railroad that is within the right-of-way of our county road be abandoned immediately. This structure is a safety hazard that creates obstructions in and near the railroad crossing. Also, falling debris from the trestle continues to be a problem and a safety hazard to approaching traffic. In addition to the dangers to the traveling public, the structure limits and hinders emergency vehicles in the area.

We appreciate your time and consideration of this request. Should you need any information, or have any questions please contact me.

Sincerely,


**RICHARD GEORGE
PRESIDENT**

**Cc: Mr. Melvin Clemens, Director
Office of Consumer Assistance
Surface Transportation Board
395 E. Street, S.W.
Washington, D. C. 20423-0001**



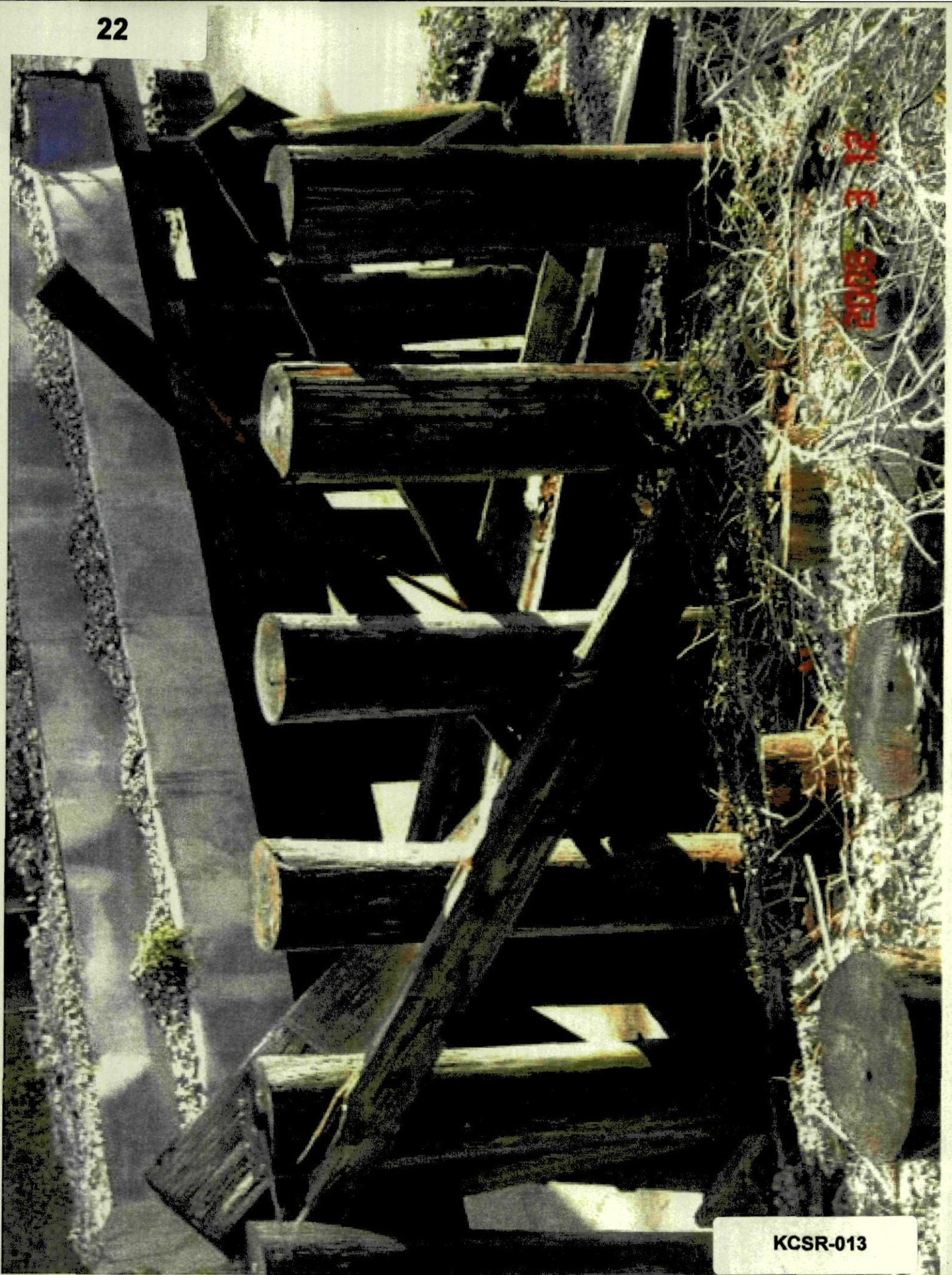
KCSR-010

2008 3 12

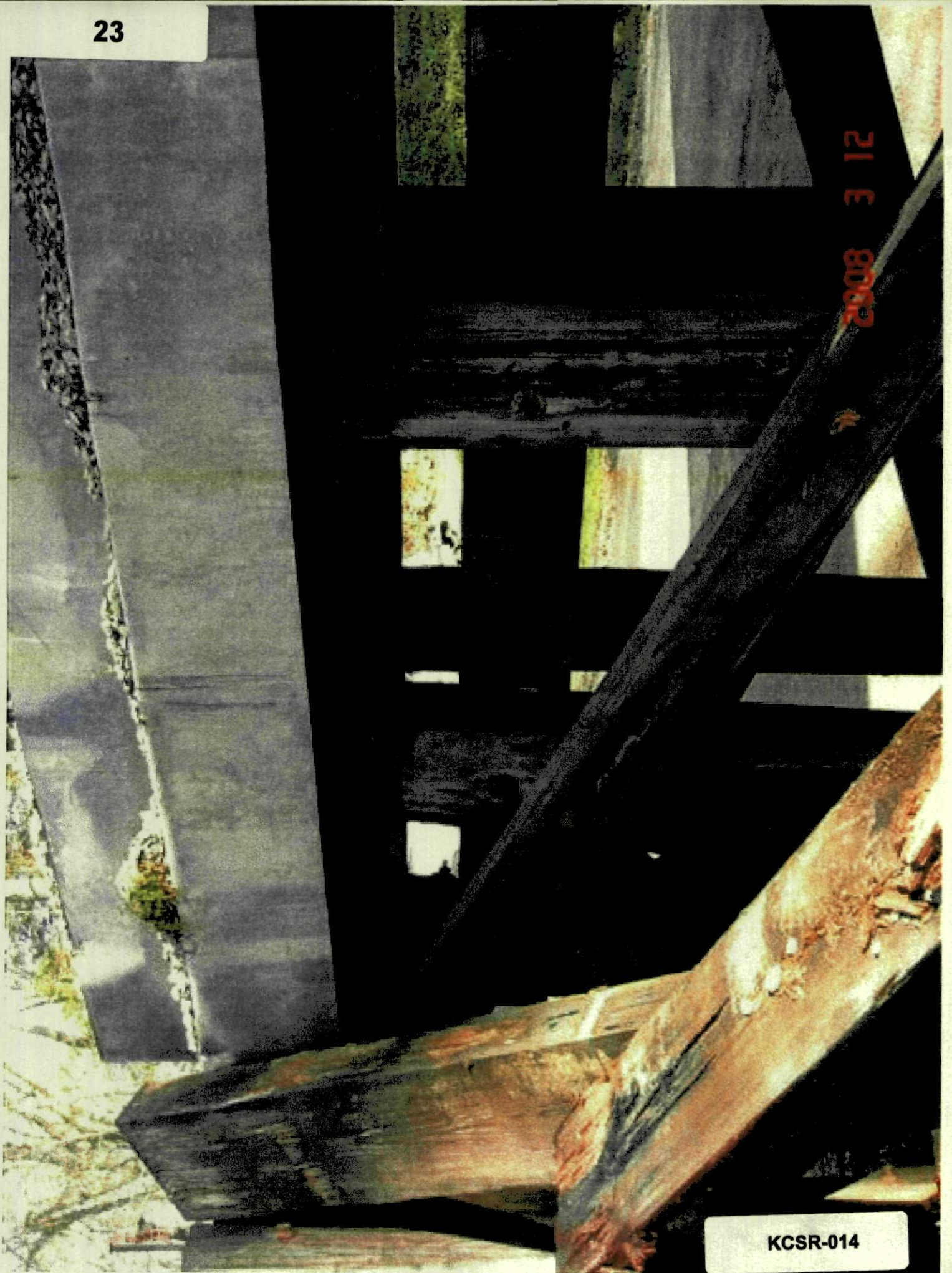
KCSR-011



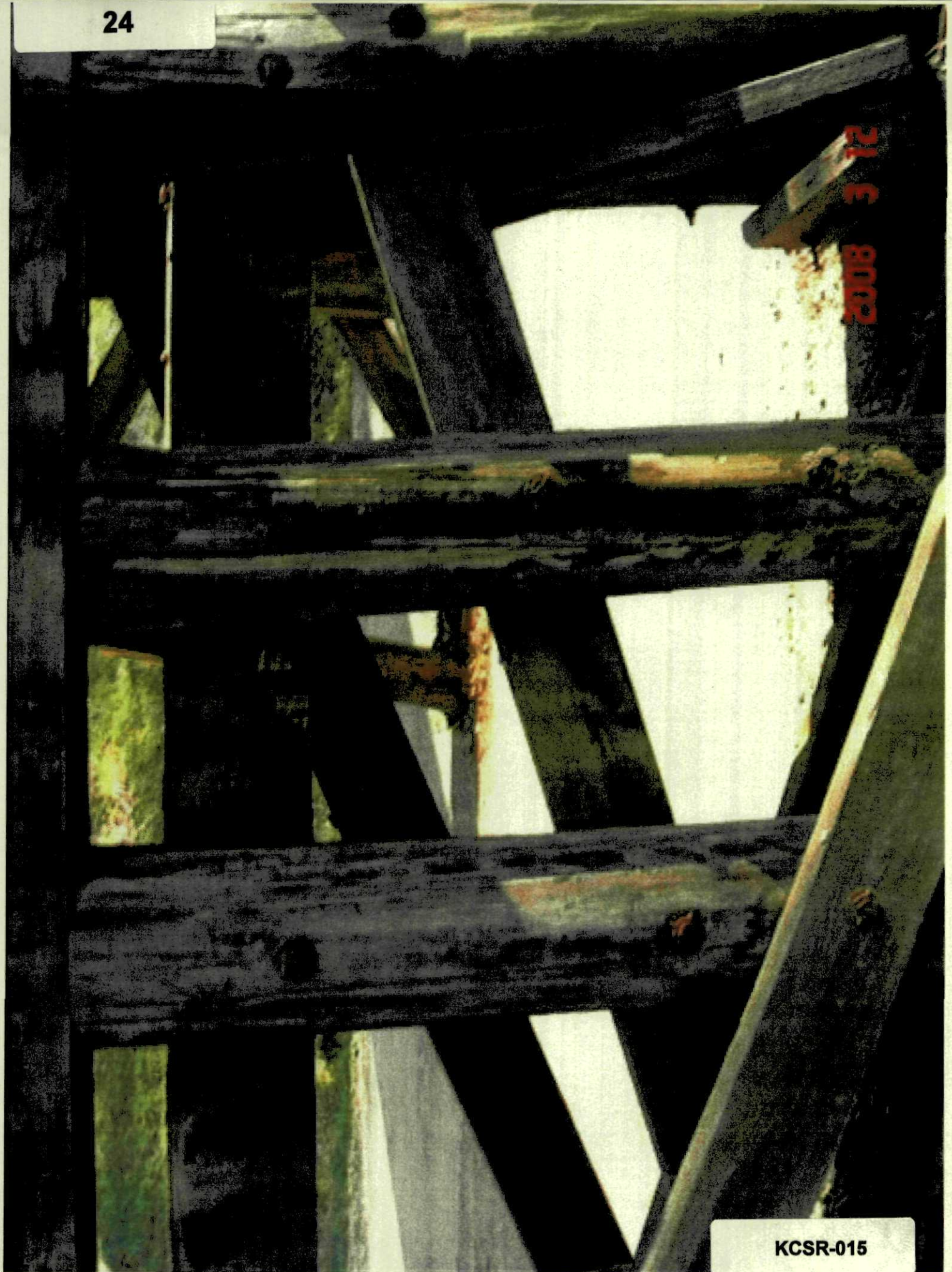
KCSR-012



KCSR-013



KCSR-014

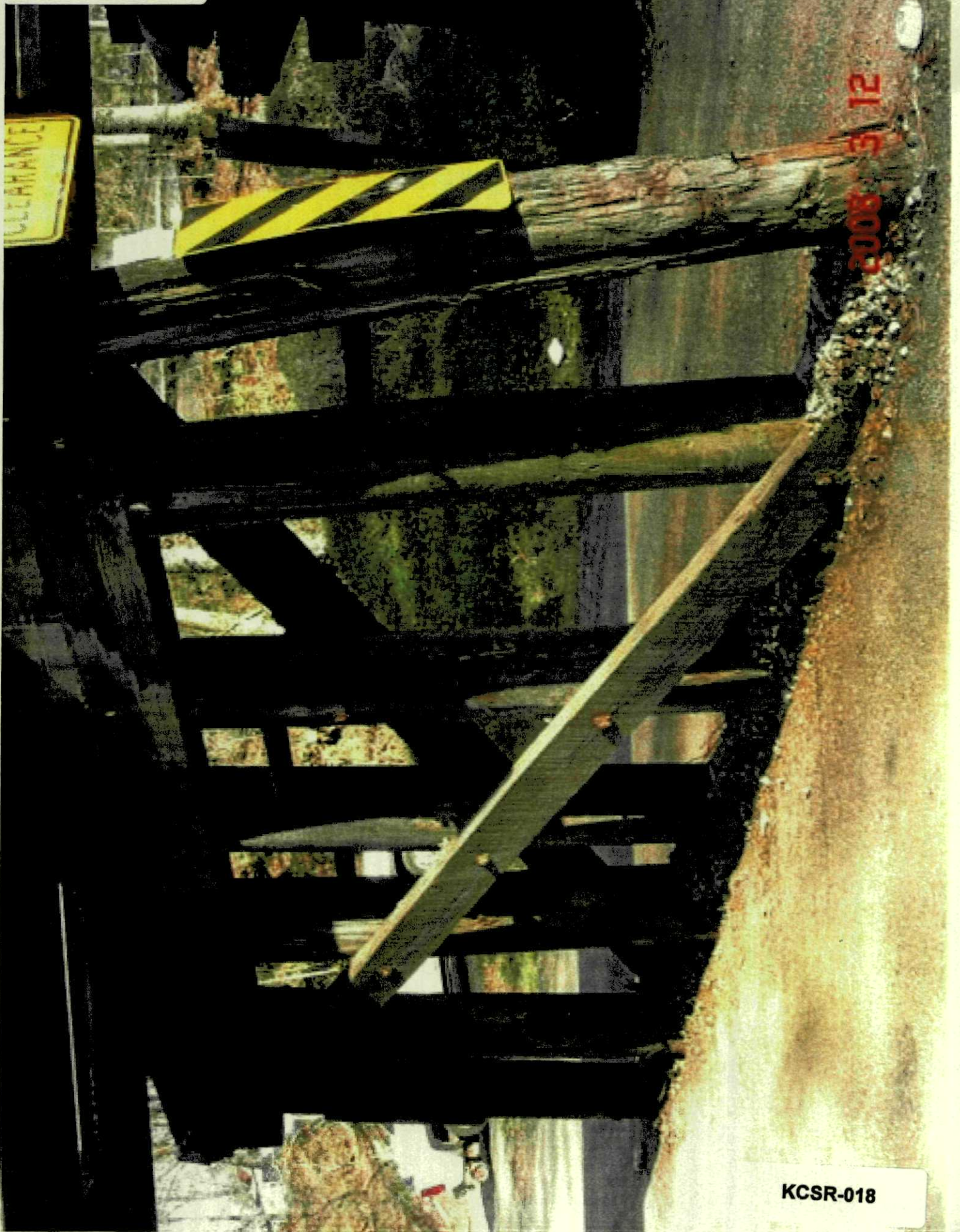




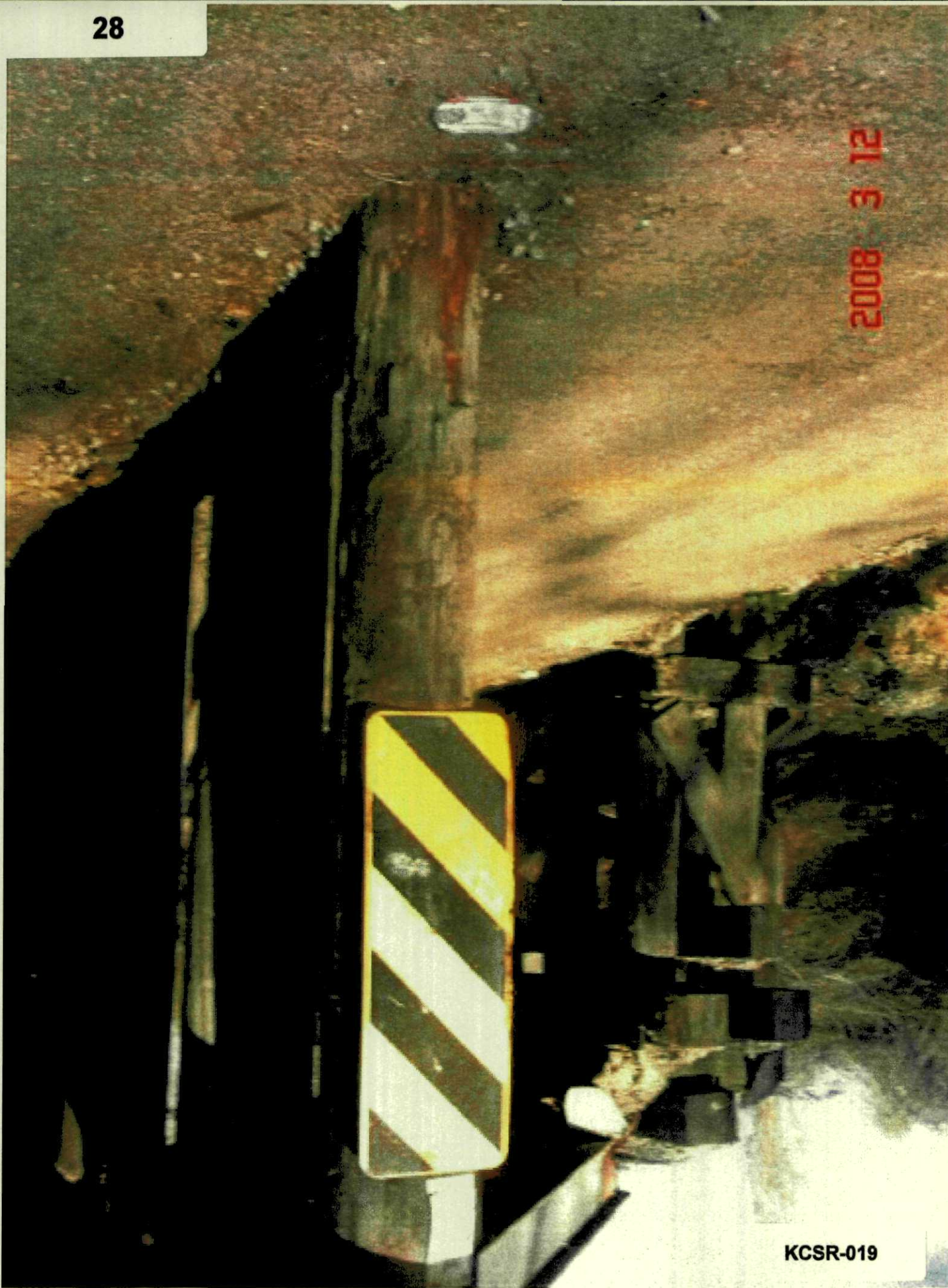
2008 3 12

2008 3 12

KCSR-017



KCSR-018



2008 3 12

KCSR-019

21 E 2002 3 12

KCSR-020

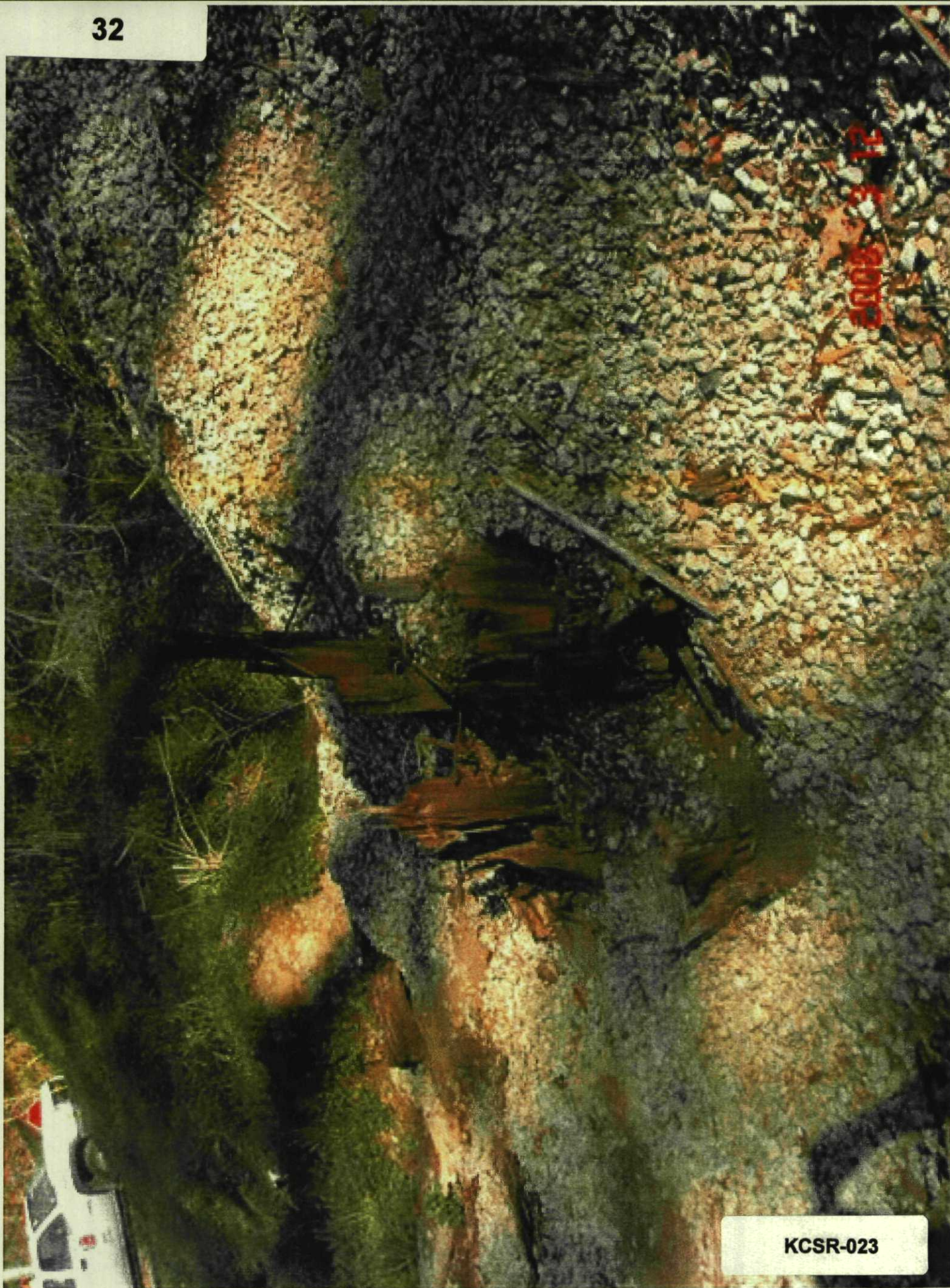




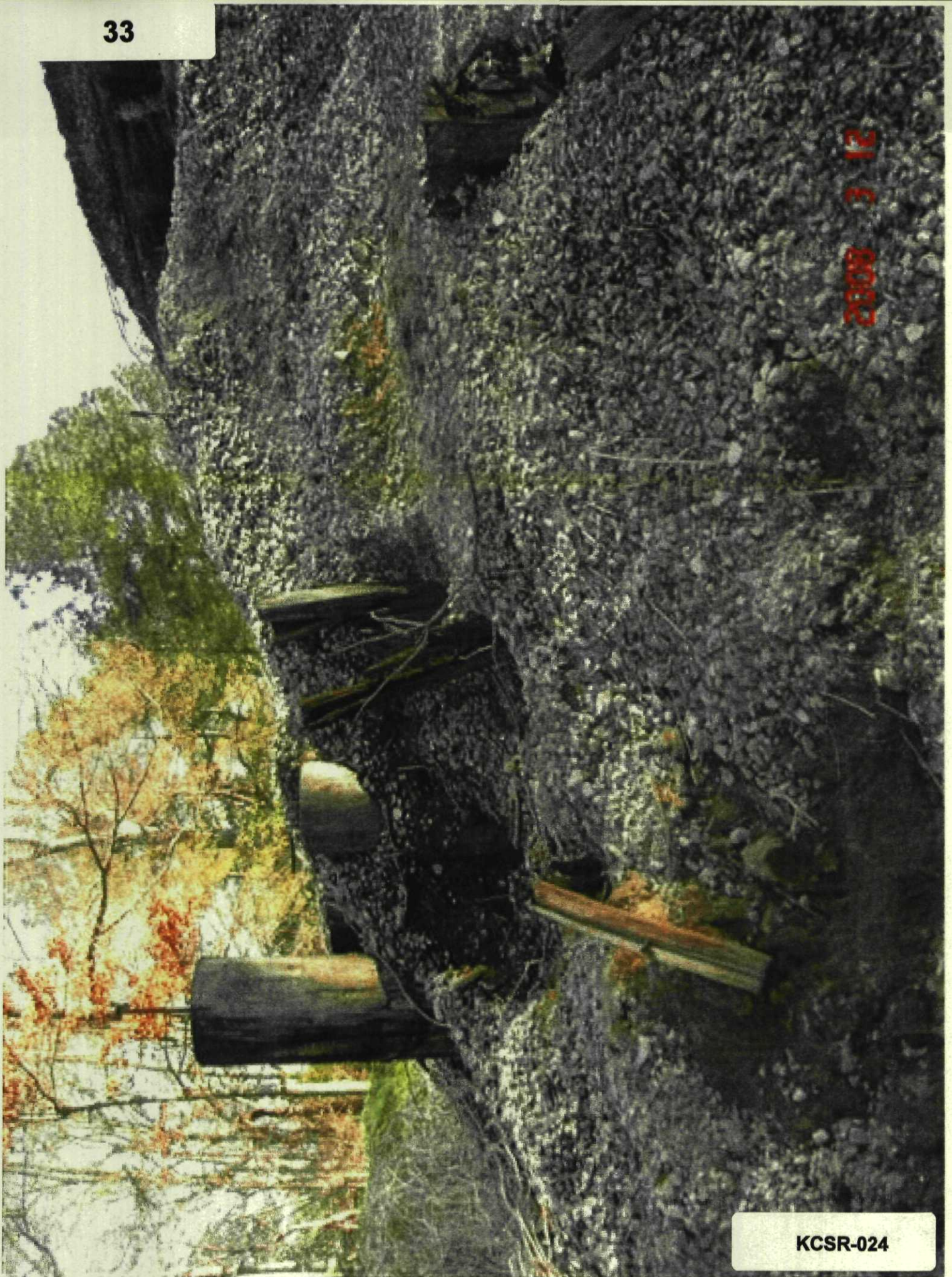
KCSR-021



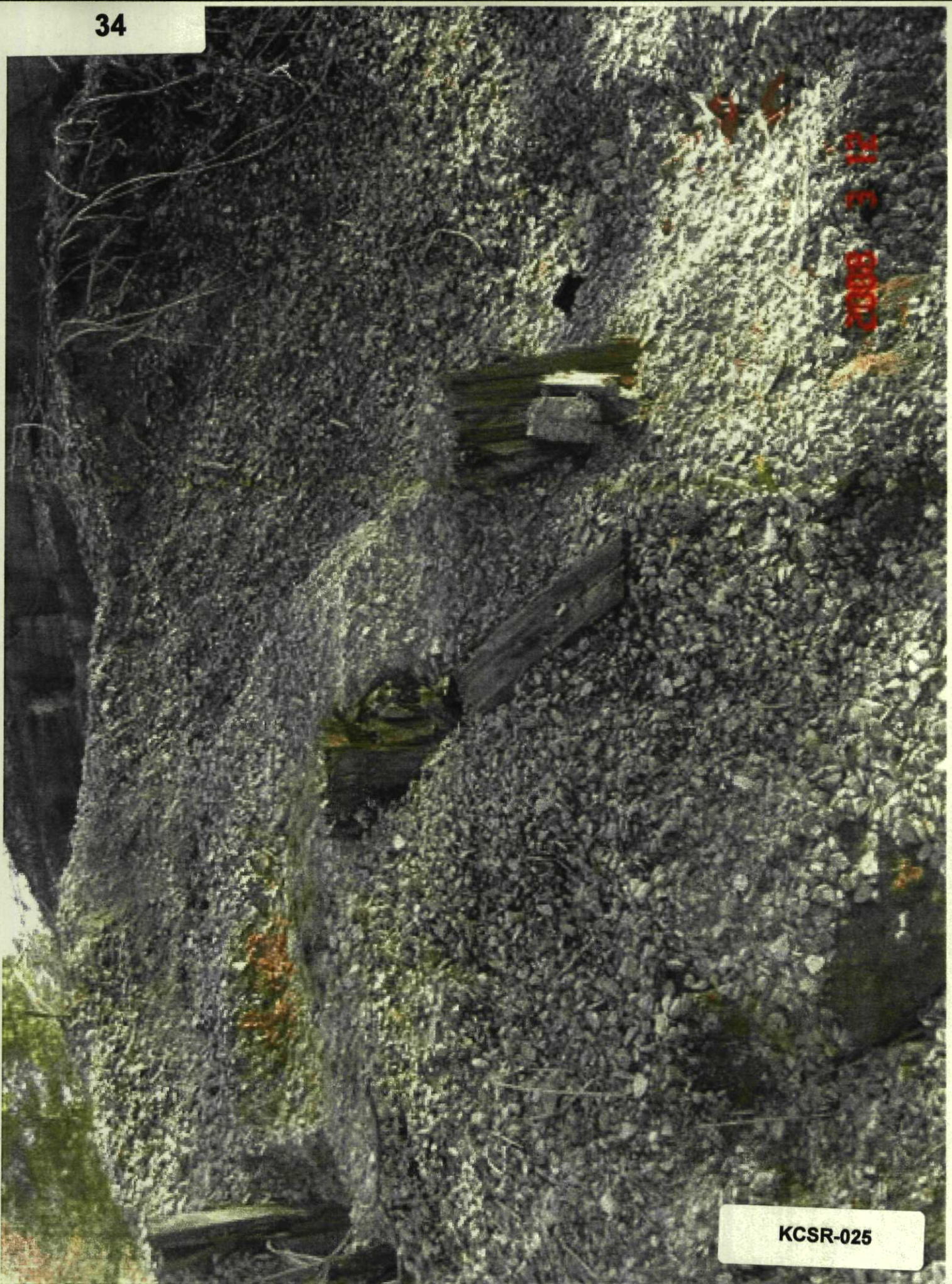
KCSR-022



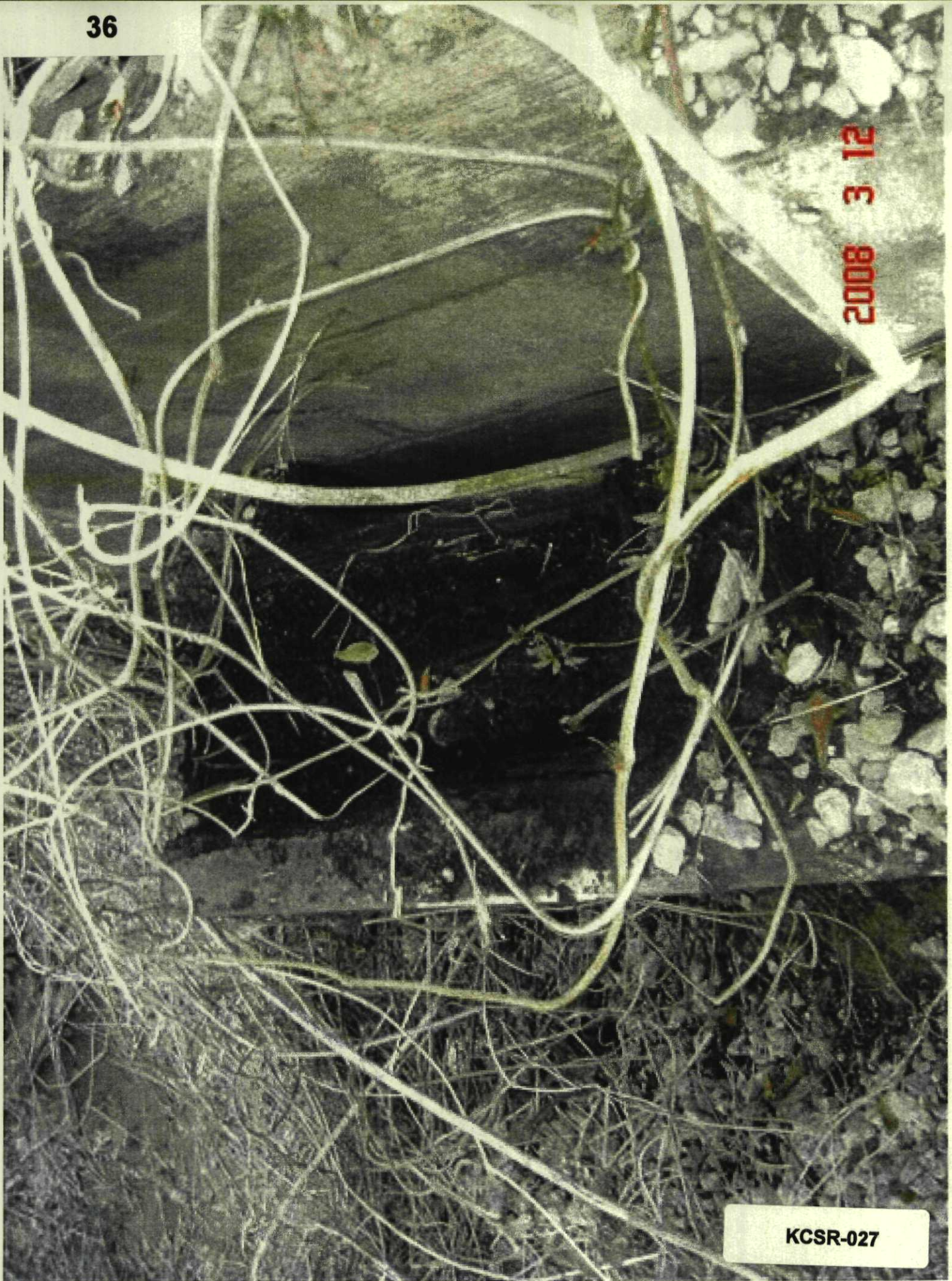
KCSR-023



2008 3 12

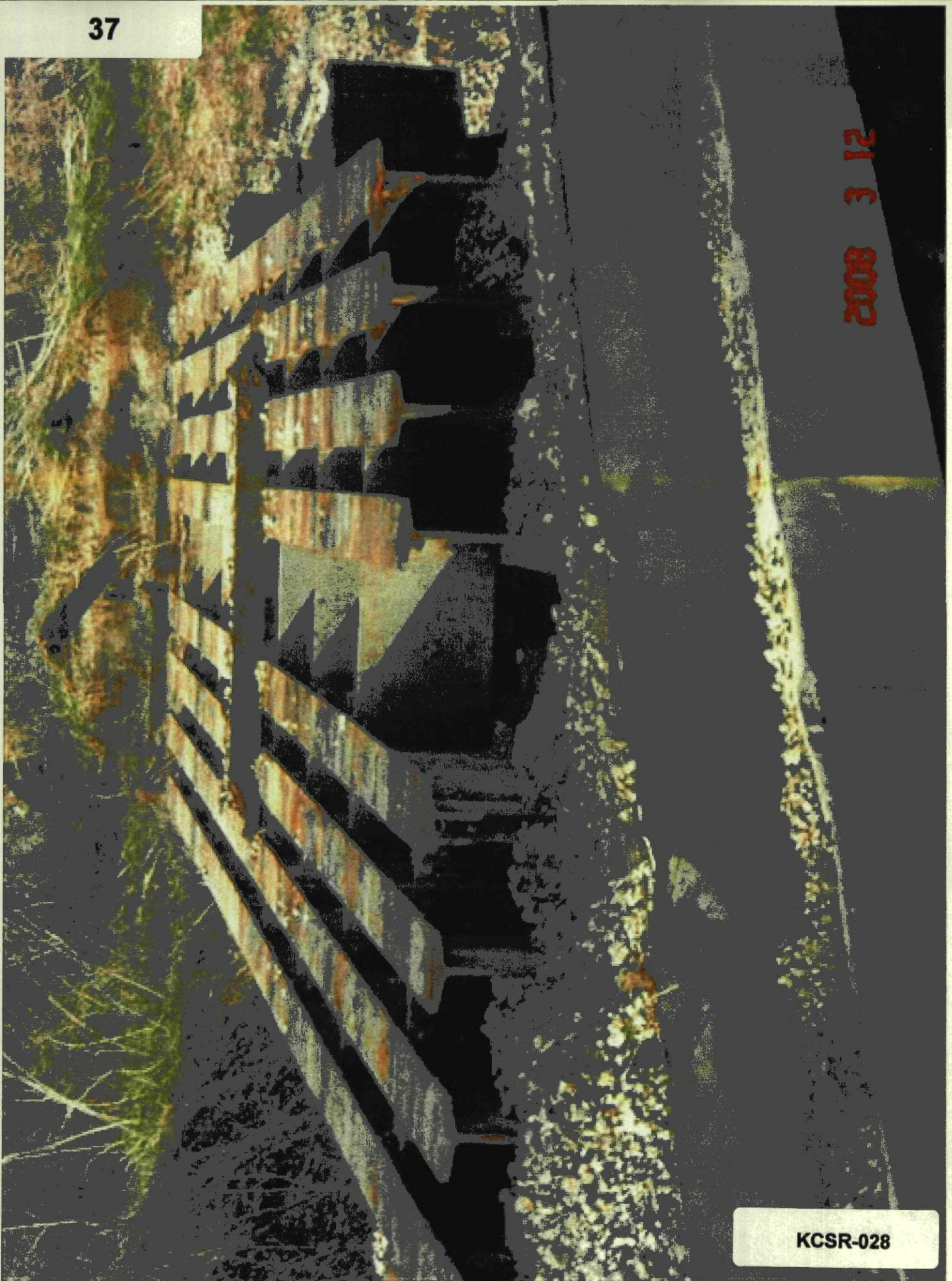


21 E 2002

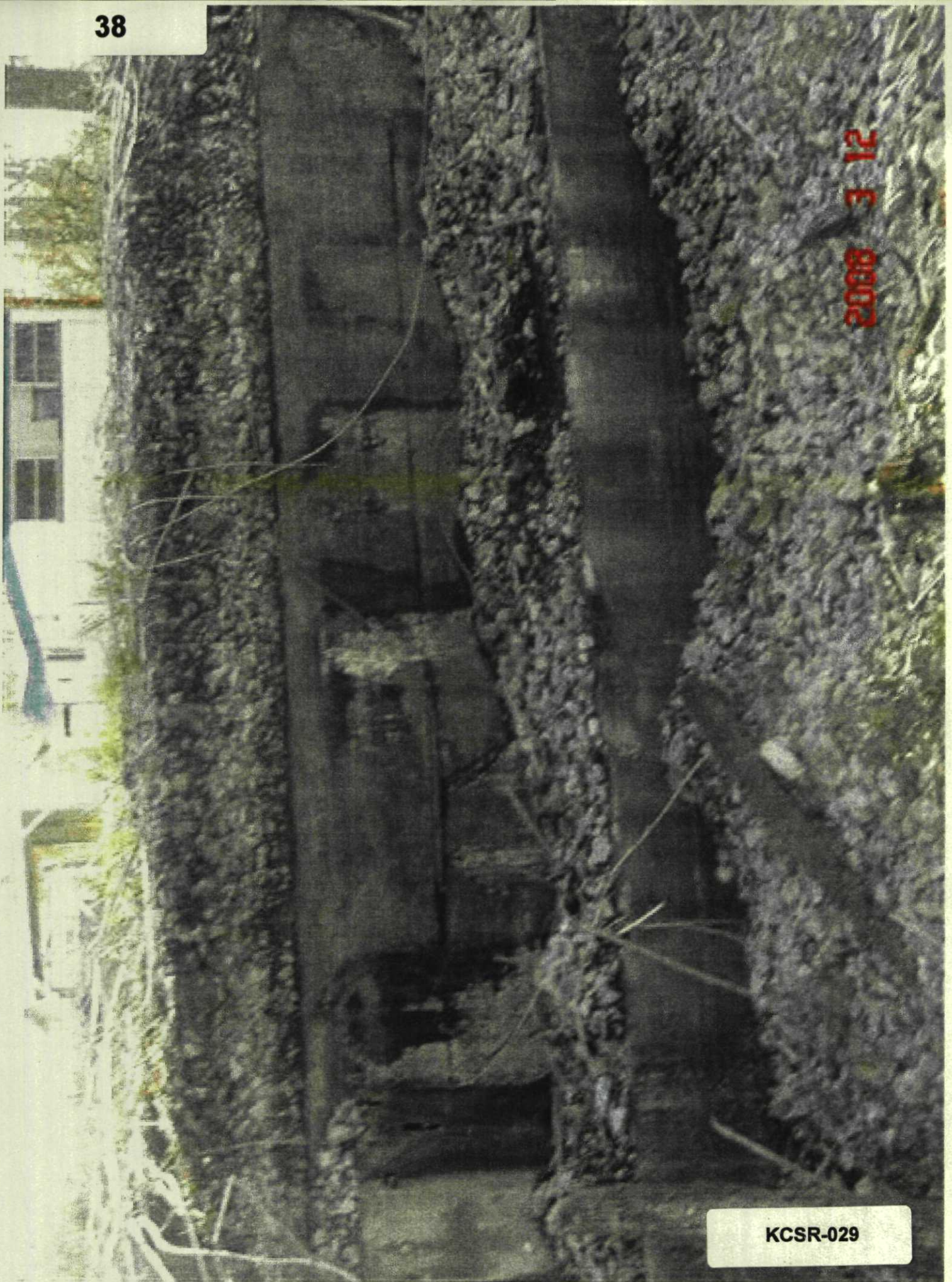


2008 3 12

KCSR-027

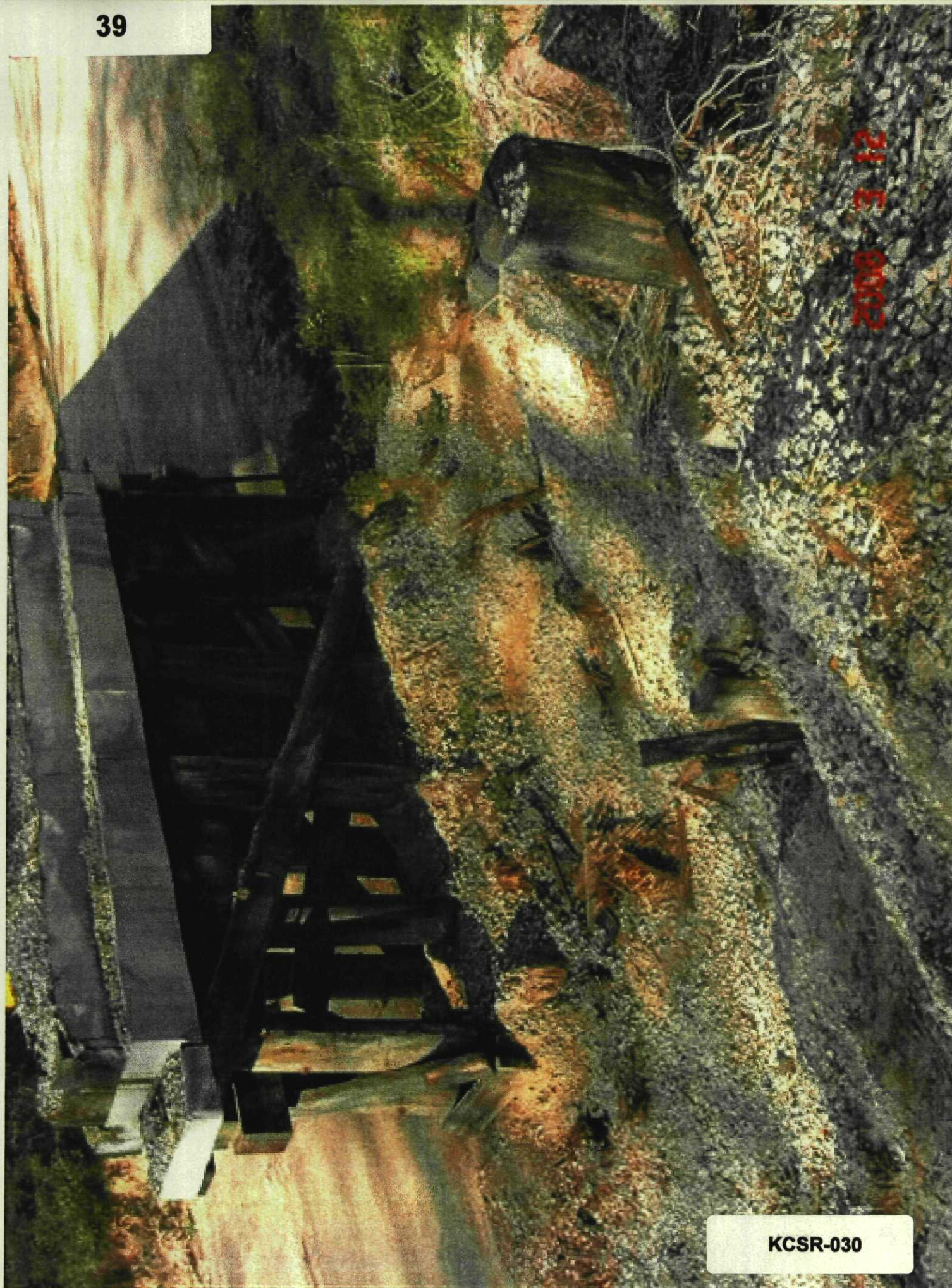


21 C 8002



2008 3 12

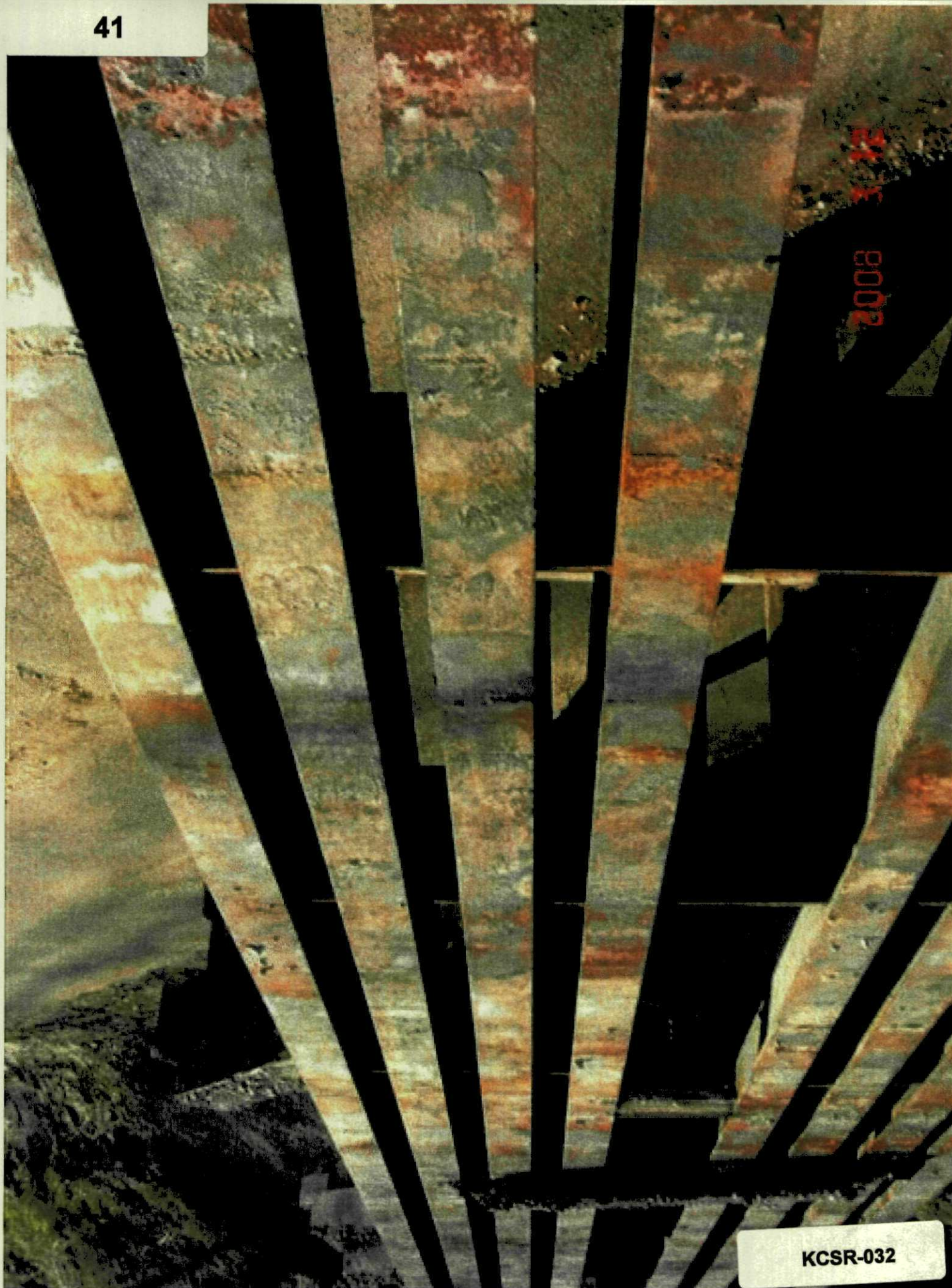
KCSR-029



KCSR-030



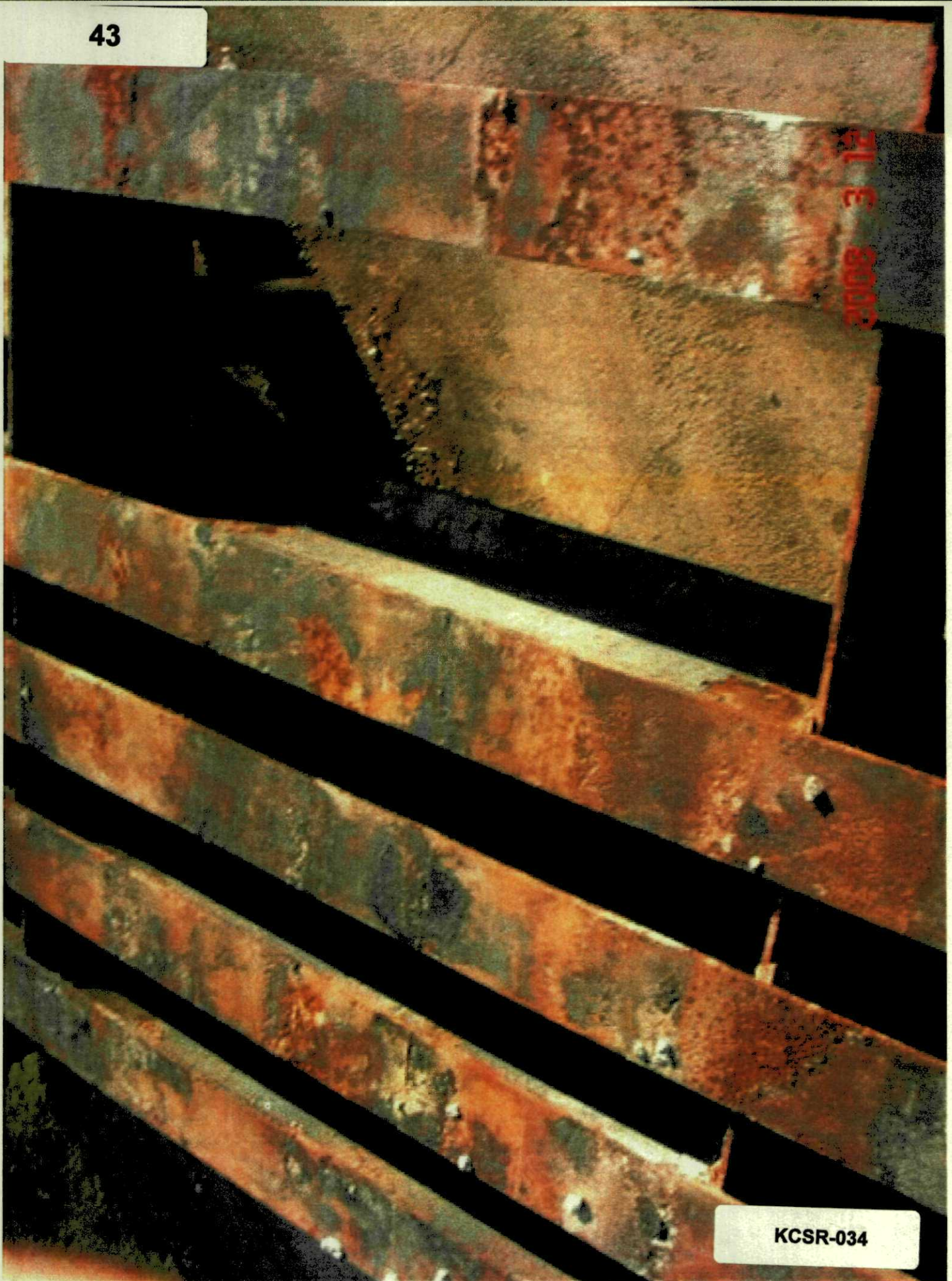
2008 3 12

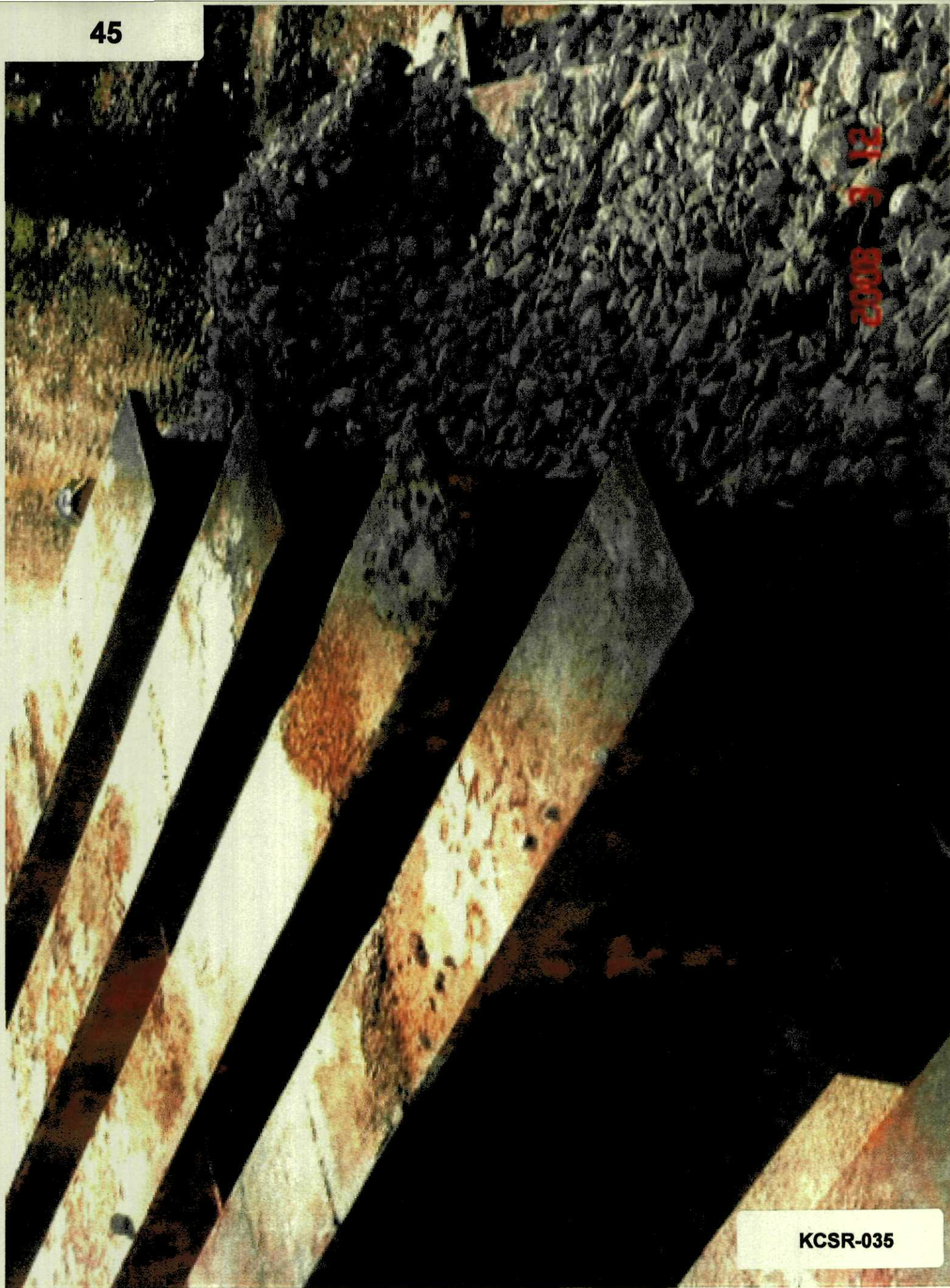


KCSR-032

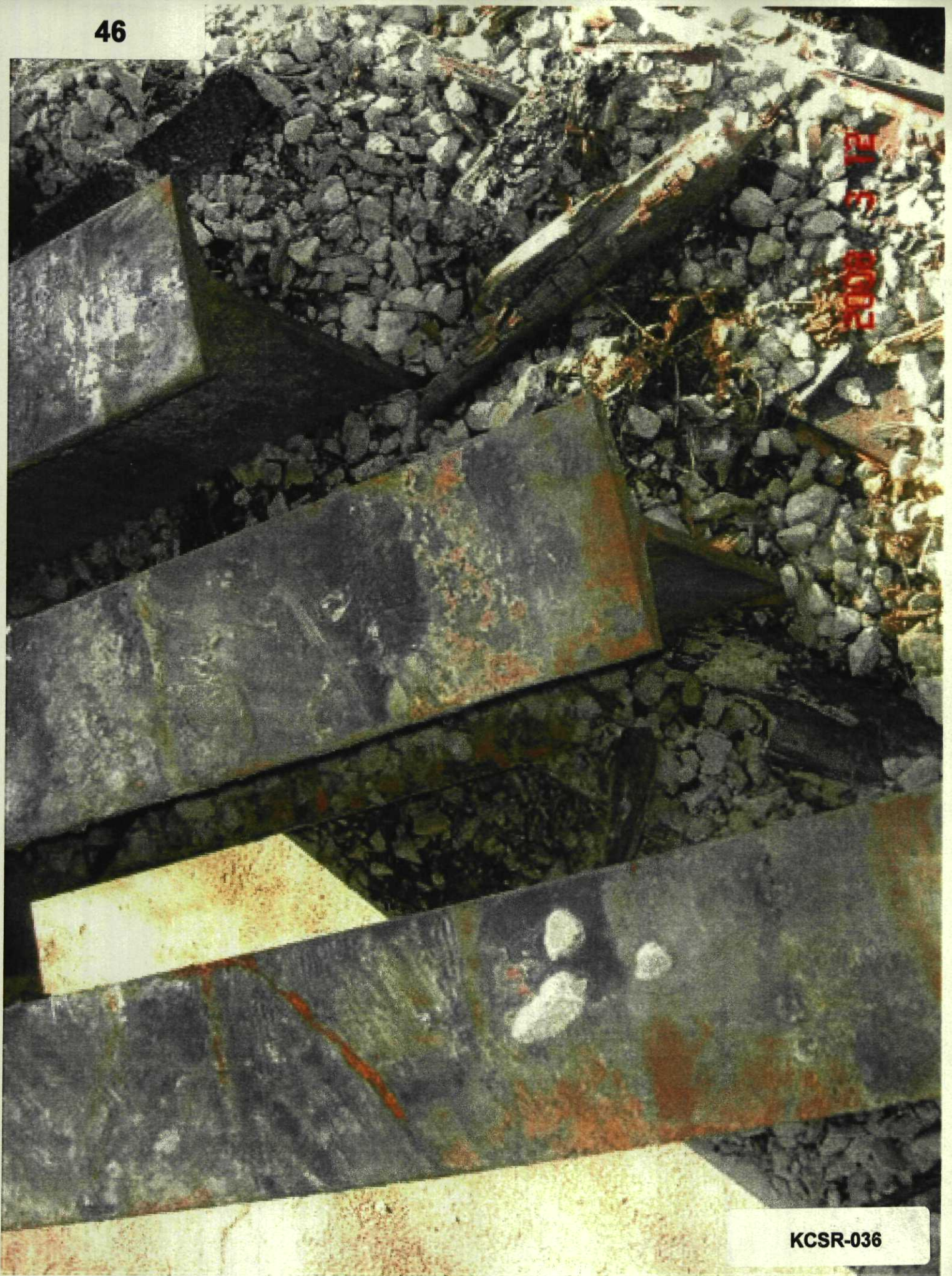
2008 3 12

KCSR-033





21 E 8002
2008 3 12



21 E 8002
2008 3 12

KCSR-037

**VERIFIED STATEMENT OF
JOHN E. DUNSWORTH**

APPENDIX 3

ILLINOIS CENTRAL GULF RAILROAD - BRIDGE INSPECTION REPORT - EB6

DIVISION: SOUTHERN

DISTRICT: VICKSBURG

STATE: MS

BRIDGE NO.: L 229.80

MILEPOST: L 229.80

OVER: ROAD (GLASS)

NEAR: Le Tourneau

TOTAL BRIDGE LENGTH:

109.5

SPANS							STRING				TIES				D P W YP CR			
							P				CAP				E A A ET OE			
							NI				SIZE				C R L AD NN			
SQ	YEAR	NO	CON	TYPE	LEN	TOT	HT	NO	UL	NO&	YR	SIZE	SIZE	YR	K	K	K	DW
		TR	TYP	& NO		LEN.		BENT	ME	TYP		&TYP						
1	1966	1	BDT			35	14	3	6	10A		141414			B			G
2	1966	1	SUB	TPP 2			14											G
3	1922	1	STL	BMS 1	40	40	14								B		69	O
8-118X X39'6"																		
4	1966	1	BDT			35	14	3	6	10A		141414			B			G

COMMENTS:

7 PILE BENT IN CENTER OF SPAN?
CLEARANCE OVER DRIVE=9'4"

REPAIRS:

Fill Behind So. Headwall (P4)

KCSR-038

DATE:

3-15-83

INSPECTOR: (

JCM:G

B&B SUPV: (

)

STRINGER CODES: A - 7X16, B - 6X14, C - 8X16, D - 7X16GLULAM